S. HRG. 101-821

NOMINATIONS OF DONALD L. IVERS AND JONATHAN R. STEINBERG

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

THE NOMINATIONS OF DONALD L. IVERS AND JONATHAN R. STEINBERG TO BE ASSOCIATE JUDGES OF THE UNITED STATES COURT OF VETERANS APPEALS

JUNE 15, 1990

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NOMINATIONS OF DONALD L. IVERS AND JONATHAN R. STEINBERG TO BE ASSOCIATE JUDGES OF THE U.S. COURT OF VETERANS APPEALS

FRIDAY, JUNE 15, 1990

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:37 a.m., in room SR-418, Russell Senate Office Building, Hon. Alan Cranston (Chairman of the Committee) presiding.

Present: Senators Cranston, DeConcini, Mitchell, Akaka, Murkowski, Simpson, Thurmond, and Specter.

Senator DECONCINI [presiding]. The Chairman will be here shortly. In lieu thereof, because of the scheduling of the Majority Leader, the Chair will yield to the Majority Leader for any opening statement on the nominations this morning.

OPENING STATEMENT OF SENATOR MITCHELL

Senator MITCHELL. Mr. Chairman, thank you very much. I am pleased to join you and the other members of the Committee at this morning's hearing to consider the nominations of Jonathan R. Steinberg and Donald L. Ivers to be Associate Judges of the U.S. Court of Veterans Appeals.

I congratulate both Mr. Steinberg and Mr. Ivers on their nominations. I welcome them and their families to this morning's hearing.

For Mr. Ivers, that seat is a familiar view of the Committee.

Mr. IVERS. It sure is.

Senator MITCHELL. For Mr. Steinberg, I assume this is a new perspective of the Committee.

Both nominees appear to be well qualified for the important positions for which they have been chosen by President Bush based on their experience, education, and previous public service. It is hard to imagine two individuals with a better hands-on background in veterans' law. I believe they will be outstanding additions to this bench.

Mr. Ivers was, of course, General Counsel of the Department of Veterans Affairs, having served in that position from 1985 through last year. He has extensive private and public sector legal experience. Mr. Ivers is a decorated Vietnam veteran.

Mr. Steinberg, of course, needs no introduction to the members of this Committee, having served as Senator Cranston's Chief

Counsel from 1977. Before that, he had already had a number of years' experience in the Senate and had clerked for Judge Warren Burger on the U.S. Court of Appeals for the DC Circuit and on the legal staff of the Peace Corps.

Mr. Chairman, today's hearing is a gratifying event for those of us who worked with Jon Steinberg for many years on veterans' matters. The number of individuals—Republicans and Democrats—who have communicated with the Administration their support for his nomination is a testament to his effective work on this Committee.

Last year I wrote to President Bush recommending the nomination of Mr. Steinberg to the Court of Veterans Appeals. I said then, and I believe today, that he has the requisite temperament, intellect, integrity, and sense of fairness for the bench. I am pleased that President Bush has forwarded his name to the Senate and this Committee for consideration to this most important Court for America's veterans.

Again, I welcome the nominees and their families, as well as the other distinguished witnesses—especially the most distinguished witness sitting up there at the panel with Mr. Steinberg and Mr. Ivers, Senator Domenici. I apologize that other business will prevent me from staying for the entire hearing.

I look forward to working with the Chairman, the Ranking Member, and the other members of this Committee in securing prompt Senate consideration of these two nominations so that this important Court and America's veterans can have the benefit of their expertise and judgment.

Mr. Chairman, I thank you very much for your courtesy in permitting me to go first in making this statement.

Senator DECONCINI. Welcome, Mr. Leader. Thank you for coming over. We know that you have got a lot to do.

Does the Whip have a lot to do, too; does that he needs to get out of here?

Senator SIMPSON. Of course.

Senator DECONCINI. Or do you want to listen to my statement?

Senator SIMPSON. Of course, we have heavy duties, but go ahead. It is all right with me. [Laughter.]

Senator DECONCINI. Not that heavy. Well, you will after you hear this statement.

Senator SIMPSON. Please go ahead, Mr. Chairman. I know my place here. [Laughter.]

OPENING STATEMENT OF SENATOR DeCONCINI

Senator DECONCINI. Mr. Leader, Mr. Minority Whip, gentlemen, I am very pleased to have you here. It gives me great pleasure to participate in this hearing on the nomination of Jonathan Steinberg and Donald Ivers to be Associate Judges of the U.S. Court of Veterans Appeals. I have worked with both of these gentlemen for some time, and have the greatest respect for their knowledge of the laws, as well as the skills that each possesses to utilize this knowledge in a very proper manner. I cannot say enough compliments on each of them.

Don Ivers has been legal counsel and demonstrated his capability over the years and is an outstanding lawyer, and I have the utmost respect for his professionalism and know that he will do a very outstanding job.

I am going to make some of my comments here about Jon Steinberg because of the particular relationship that I have enjoyed with him. I also want to pay tribute to Jon for his long, selfless dedication to America's veterans.

Jon, you have earned not only this position, but the admiration of veterans throughout the country. Having worked closely with you for 10 years, I have come to know and respect your legal talents and your political skills. I can think of no person who is more conversant with both the issues and the laws affecting our Nation's veterans. I can think of no person who is more committed to ensuring that all veterans receive the benefits to which they are entitled. And I can think of no person who has been more helpful to this Senator and his staff in ensuring that Arizona veterans are fairly treated under the existing veterans' benefit system.

Your legal qualifications for the bench are overwhelming, Mr. Steinberg. You graduated cum laude in 1963 from the University of Pennsylvania School of Law. Upon graduation you received a clerkship with the U.S. Court of Appeals for the District of Columbia under the Honorable Warren E. Burger, and we know the success he has, and now we are seeing you ultimately come to the bench, as well.

You have legal experience from 1963 to 1969 that would be more than enough to provide you sufficient background for the Court of Veterans Appeals.

However, Jon, you have considerably more experience in veterans' affairs than probably any other nominee for the new Court this Committee has voted on since I have been around. You began work in veterans' affairs over 21 years ago—you don't look that old—as Counsel to the Senate Committee on Labor and Public Welfare, Subcommittee on Veterans' Affairs. You remained Counsel to the Labor and Public Welfare Committee on two other subcommittees from 1971 to 1977, but you also served as primary veterans' affairs advisor to Senator Cranston, who was then Chairman of the Subcommittee on Health and Hospitals of the new Committee on Veterans' Affairs.

From 1977 to 1980 and 1987 to the present, Jon, you have served as Chief Counsel and Staff Director for the majority on the Committee on Veterans' Affairs, serving as Minority Chief Counsel and Staff Director from 1981 through 1986.

So I am very pleased that this experience is bringing you to the bench. I have come to respect, Jon, your intelligence, your integrity, and your capability. The combination of your legal abilities with your long professional experience in the area of veterans' affairs makes you the ideal person to fill the position for which you have been nominated.

I want to compliment the Secretary of Veterans Affairs, Mr. Derwinski, for his support of this nomination, as well as Mr. Principi and others in that department who realize the importance of the quality of the two individuals that we have here today.

I also want to thank President Bush for his judgment in appointing someone who is a Democrat, but who has a long history of being impartial and being one who is professional.

I'd like to express personally my gratitude to you, Jon, and on behalf of my staff—Mary Hawkins, Tim Gearan, and others who have worked with you for years, Judy Leiby in my Phoenix office, and others. You have taken the time to help us with our particular problems.

I want to congratulate you on your nomination to this post, and I want to congratulate your family—Shellie and your son, Andrew, who is also, I understand, studying to be a lawyer.

Mr. Ivers, I don't want to leave you out. I congratulate you and your family. You have a history of an outstanding legal career of dedication to your profession and to veterans and to the people that you have served. We are pleased to have you as a nominee, as well. Thank you very much.

The Senator from Alaska.

Senator MURKOWSKI. Good morning.

I wonder if there is a gentleman from the Selective Service that has come in?

Mr. WILLIAMS. Yes, sir.

OPENING STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Thank you.

Good morning. I want to join all of you this morning in this confirmation hearing to address the nomination of Donald Ivers of New Mexico and Jonathan R. Steinberg of Maryland to be Associate Judges of the U.S. Court of Veterans Appeals. This will round out the Court to its full complement of seven judges, although two others have not yet been voted on by this Committee since their confirmation hearings of last February 8.

I especially want to welcome Don's son, Kevin, who I understand is here, as well as Jon's wife Shellie, and their son Andrew.

Looking at the professional backgrounds of those before us, it seems that both the nominees are well qualified to decide, adjudicate claims brought by our Nation's veterans.

Don Ivers is an Army veteran who earned the Bronze Star Medal in Vietnam. He is currently a lieutenant colonel in the U.S. Army Reserve. Don also has a long and varied history of legal responsibilities to his credit.

His position in Government service, alone, includes: Counsel to the Secretary of Transportation; Chairman of the Secretary's Safety Review Task Force; Chief Counsel of the Federal Highway Administration; Chief Counsel for the Republican National Committee; and General Counsel of the Veterans' Administration.

In the private sector, Don spent 6 years as a trial attorney with a Washington, DC, law firm and specialized in civil litigation.

I think I can safely say that Don knows his way around the battlefield and the courtroom, even one that has just come into existence, as this Veterans Court has.

Mr. Jon Steinberg, likewise, commands respect for his legal expertise and his lengthy experience. He earned his B.A. from Cornell University in 1960, his law degree from the University of

Pennsylvania Law School in 1963. After 1 year as a law clerk with the U.S. Court of Appeals for the DC Circuit and 5 years with the Peace Corps, Jon was employed by Senator Cranston in 1969 and has been with him ever since, first on the Senate Committee on Labor and Public Welfare for 8 years, and then on the Senate Committee on Veterans' Affairs for the last 13 years.

I am further impressed by the number of prominent witnesses who wish to attest to both Don's and Jon's qualifications and character. Heaven knows, if our Committee's responsibilities in these hearings are satisfied by publicly reciting the long list of virtues of our nominees, we could take a Committee vote right now and go home. But I think we owe the nominees and the American people more than that.

Both Mr. Don Ivers and Mr. Jon Steinberg are aggressive. They are go-getters who have accomplished much in their professional lives; however, in pursuing their work aggressively, they have opened themselves up to some rumor, some criticism, until in some instances it is difficult to separate the men from the myths.

I have heard some say that Mr. Ivers cannot be fair as a judge because of his views and written opinions when he was General Counsel of the VA.

News articles and letters, in a pattern of criticism, comment about Jon Steinberg being the only nonveteran nominated to sit in judgment of veterans' grievances. Statements of veterans I have heard from accuse him of being an anti-Vietnam war activist during that era. More current are claims that Jon is responsible for passing information about—can you imagine—even Republican nominees to the press in order to convert the press articles into direct questioning during confirmation hearings.

Such suspicions and doubts I think must be put to rest once and for all.

Let me also say that I do not believe everything I read or everything I hear. I have dismissed a good deal of material as baseless and nonsense. The matters I will discuss today with Don and Jon are based on criticism from persons who have written to me or have voiced their concerns in the media, and I intend to place this material in the record to substantiate the questions.

[The material referred to appears on pp. 126–130.]

Senator MURKOWSKI. Don and Jon deserve to ascend the bench in complete dignity, worthy of the respect to be accorded them by our veterans, by the legal community, and by our country. That is my primary concern.

I want to congratulate you both on your nominations, and I look forward to your sworn testimony and our discussions with you today.

Senator THURMOND. Mr. Chairman, I wonder if it would inconvenience anybody if you could give me about 2½ or 3 minutes—I'm Ranking Member in Judiciary, and I'm due up there at 10 o'clock.

Chairman CRANSTON [presiding]. Of course.

Senator THURMOND. Would that be agreeable?

Senator DECONCINI. The Senator from South Carolina may proceed.

OPENING STATEMENT OF SENATOR THURMOND

Senator THURMOND. Mr. Chairman, it is, indeed, a pleasure to be here this morning to consider the nominations of Jonathan Steinberg and Donald Ivers to the Court of Veterans Appeals. Both of these men are well qualified to sit on the Court, and I commend each of them to this Committee.

With over 20 years of experience in handling veterans' issues, Mr. Steinberg has become a true expert in this area of the law. As former Counsel to the Subcommittee on Veterans' Affairs of the Labor and Public Welfare Committee, and as Chief Counsel and Staff Director of the Committee on Veterans' Affairs, he has exemplified excellence in staff professionalism. Though I have not always agreed with his approach on issues, I greatly respect his intellectual abilities, his attention to detail, and his dedication to his profession.

Upon graduating from Cornell University he went on to attend the University of Pennsylvania School of Law, from which he graduated cum laude. Mr. Steinberg later served as a clerk to the Honorable Warren Burger, who was then sitting on the U.S. Court of Appeals for the DC Circuit.

Mr. Chairman, I have a letter from former Chief Justice Burger concerning the fine qualifications of Mr. Steinberg, and I would ask that it be placed in the record.

Senator DECONCINI. So ordered.

[The letter from former Chief Justice Burger appears on p. 71.]

Senator THURMOND. Mr. Chairman, as you know, he is a very able nominee, and I would urge the expeditious approval of his nomination.

The other nominee before the Committee today, Mr. Don Ivers, is also well qualified to serve as an Associate Judge on the Court of Veterans Appeals.

Mr. Ivers received his undergraduate training from the University of New Mexico, and in 1971 graduated from the Law School at the American University in Washington. He has been in private practice, served as Chief Counsel to the Federal Highway Administration, and served as General Counsel to the Department of Veterans Affairs. He is a very able lawyer, and will make a fine addition to the Court.

I might also add that he served on active duty in the U.S. Army from 1963 to 1968, and currently serves as a lieutenant colonel in the Reserves.

With his legal background and his experience as a veteran, he will be well equipped to address the issues that will be coming before the court.

Mr. Chairman, he is an able nominee, and I would urge the prompt approval of his nomination.

I want to thank the Committee for allowing me to speak at this time so I can go to the Judiciary Committee.

I will explain to these nominees why I have to leave. I'm sorry I have to leave, but I am going to leave my proxy to vote for both of you.

Senator DECONCINI. The Senator from California, Chairman Cranston.

OPENING STATEMENT OF CHAIRMAN CRANSTON

Chairman CRANSTON. I want to thank you very much, Dennis, for presiding while I was otherwise occupied.

I welcome all of you to this hearing to consider the nominations of Donald L. Ivers and Jonathan R. Steinberg to be Associate Judges on the U.S. Court of Veterans Appeals.

Don and Jon, a warm welcome to both of you. I offer you my sincere congratulations on your nominations.

I am pleased to note you both have family members here today. Don Ivers is accompanied by his son, Kevin. Welcome, Kevin. Jon is accompanied by his wife, Shellie, and his son, Andrew. I offer them a warm welcome. I know how proud all of you are.

Each of you has a daughter named Amy who, unfortunately, could not be here today. Don's daughter is participating in the World Whitewater Kayaking Championships in Wisconsin; Jon's daughter is traveling in Italy. I'm sure they would both like very much to be here, in light of what they are doing, it is hard to feel sorry for them. [Laughter.]

Today's hearing brings us yet another step closer to the fulfillment of a dream that began in the Senate over 14 years ago—to provide for judicial review of VA decisions denying claims for benefits. The legislation that created the Court of Veterans Appeals provided for a full complement of seven judges on the bench of the Court. These nominations are the sixth and seventh, respectively, that have been considered by this Committee. Assuming Don and Jon are confirmed, they, along with Hart Mankin and Ronald Holdaway, would bring the Court to its full capacity.

The sustained effort in the Senate from 1976 through 1988 to provide for judicial review involved tremendous amounts of work by this Committee, so the new Court is of special significance to us. Veterans and this Committee share, I am certain, the desire to see it functioning at full strength as soon as possible.

Regarding the two nominees, many aspects of their respective backgrounds qualify them very highly for service as Associate Judges on the new Court.

Don Ivers graduated from the University of New Mexico in 1963, at which time he entered the Army. During his 5 years on active duty, he served tours in West Germany as a tank platoon leader, reconnaissance platoon leader, and battalion operations officer.

First lieutenant, and then captain, Ivers later served as basic training company commander at the U.S. Army Training Center at Fort Campbell, KY. He then spent 7 months at Fort Knox as a troop commander and troop executive officer to the 3rd Squadron of the 17th Air Calvary before that squadron shipped out to Vietnam, where he served as its assistant operations officer and liaison officer.

Captain Ivers was honorably discharged in 1968, having been awarded the Bronze Star, the Air Medal, the Army Commendation Medal, and the Joint Services Achievement Medal.

After discharge from the Army, Don attended American University's Washington College of Law, from which he received his law degree in 1971. Throughout his last year of law school and following graduation, he was a law clerk at the District of Columbia Su-

perior Court, and then he served a 14-month clerkship with the District of Columbia Court of Appeals.

Don then worked for 6 years as an attorney in private practice and served 3 years as the Chief Counsel to the Republican National Committee.

Since 1981, Don has held a series of positions in the executive branch—Chief Counsel to the Federal Highway Administration, Director of the Safety Review Task Force at the Department of Transportation, and, from 1985 to 1989, General Counsel of the Veterans' Administration and Acting General Counsel of the Department of Veterans Affairs. Currently he is serving as Assistant to the Secretary of Veterans Affairs.

As I have stated previously, Jon Steinberg's career has also been outstanding. Since I have the honor of introducing Jon this morning, I will reserve my remarks about his impressive qualifications for that moment.

In closing, I note that each of the nominees has completed the Committee's questionnaire for Presidential nominees and the extensive special questionnaire for judicial nominees, all of which, except for confidential parts, will be printed in the hearing record, along with letters from the Office of Government Ethics, dated February 6, 1990, May 29, 1990, and May 30, 1990, to the effect that each nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Also, I have reviewed the FBI reports on the nominees and have found no bar to their confirmations in those reports.

In addition, both have submitted responses to letters I submitted to them on the issue of judicial recusal.

[The material referred to appears on pp. 74–124.]

Chairman CRANSTON. Senator Rockefeller has also submitted a statement of very strong support for Jon's nomination. That statement will be included in the record.

[The prepared statement of Senator Rockefeller appears on p. 72.]

Chairman CRANSTON. At this time I want to yield to my friend and distinguished colleague from New Mexico, Senator Pete Domenici, who is here to introduce Don Ivers.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. Thank you very much, Senator Cranston.

Mr. Chairman and members of the Committee, I will be very brief. Obviously, you all have said many things about Don, and I can hardly add.

But let me tell you why I am here. There are two reasons: he asked me to be here, and I am pleased to be here; and, second, if there isn't an old adage there ought to be one that says if you start out right you are apt to end out right. I'm here because he started out right. He got his education in New Mexico. He went to New Mexico Military Institute and University of New Mexico, and I think that started him out right, and I am very, very pleased that within his chosen profession he is culminating a very exciting life. He is a dedicated and devoted family man. He is culminating that

here today, requesting that you confirm him to take a position that he very much wants to occupy. That, too, is very important.

He has done a lot of exciting things in his life. You have cited most of them. Senator Cranston, you have gone through almost the entire list of what has occurred in his life and what he has done and accomplished, so I am not going to add to it.

But I think it is fair to say that when you look at that, clearly, assuming a judicial position in this Court of Appeals where many, many veterans' decisions of significance are going to be decided, it is the kind of thing that Don clearly has trained for and wants to do.

With that, I don't think we can add much more, other than to say that I was asked by Senator Warner to submit a statement regarding Don to the Committee. I have done that. I'd be pleased to stay, if you want me to, but I don't think I can contribute other than what I have just done. It was my pleasure to respond to his request to come here in the affirmative and to try my best to tell you that, since he wants this job and has trained for it, I believe he will do an excellent job.

Thank you very much for giving me a moment.

[The prepared statement of Senator Domenici appears on p. 72.]

[The prepared statement of Senator Warner appears on p. 73.]

Chairman CRANSTON. Thank you very much.

Senator Simpson, do you have any opening remarks?

Senator SIMPSON. That's what you get when you come in here first, Mr. Chairman. [Laughter.]

Senator DECONCINI. I'm only Acting Chairman.

OPENING STATEMENT OF SENATOR SIMPSON

Senator SIMPSON. Oh, well. This is a very important hearing, obviously, and I am very pleased to be here for it to consider the nominations of two very fine and very well-qualified candidates to serve on the Court of Veterans Appeals. It is a very important Court. I have worked on it for many years, long before it was ever fashionable. So it is good to see us filling the Court.

Don Ivers, you have had a distinguished career. I won't go into that. Others have covered that well. But we know you best from your years of service as the General Counsel for the VA, and you have done a splendid job at that.

And Jon Steinberg is rather well known to us all. It is good that he is sitting down there at that end of the table. After today, he will know exactly what that is all about, I think. But we will be fair and civil and courteous. That is very important. Whatever has to come out, let it come out. I know that you will deal with that very well.

You are assuredly well qualified and a very able candidate, with whom I have had day-to-day contact over the years. When I was on this Committee as Ranking Member and as Chairman, my early dealings with Jon Steinberg were in 1979, where I actually read a complete bill. I know that is a shocking statement that should not be part of the record, but it is. [Laughter.]

And then I went to Jon Steinberg and I said, "What is this bill about?" He went through it and he said it was a shocking thing

that a member had actually read every single word of the bill, but I was knew and green. And it was a long bill.

And I remember then from that experience that I learned that I could trust Jon to answer my questions from a technical standpoint without the threat of high partisanship. We made a pledge many years ago, as I did my duties—I said, "Don't ever blindside me in a partisan way, and I won't be doing that to you." That worked out, because he has the skills and ability as a staff member to do just that, should he have chosen to do so.

We do see them with awesome powers, and they have that. We all learn that, as "principals" in this place.

So, I know that you are ready to serve in this new mission in your life and will do a splendid job. Certainly, with all I know and everything that I have read, I am ready to fully support you. We'll see what develops here today. I am going to stay here to see what that is and how that transpires.

There are many witnesses, and I won't take more time than necessary. I think we have two people who unquestionably bring to the Court a vast reservoir of ability and knowledge and zeal and dedication.

I thank you, Mr. Chairman.

Senator DECONCINI. The Senator from Hawaii.

Senator AKAKA. Thank you very much, Mr. Acting Chairman.

Senator DECONCINI. We are very pleased to welcome the Senator from Hawaii, the newest appointee on this Committee. He has a long history in the House of Representatives in veterans' affairs and many different areas. We are very pleased to have you here, Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman.

Thank you for this opportunity to make a few remarks concerning the pending nominations of the two outstanding men before us today.

From everything that I have heard and read, Jon Steinberg and Donald Ivers appear to be eminently deserving of the high office to which they aspire.

Jon and Don, allow me to extend my warmest welcome to you, as well as the members of your families, who are also here today. This is a proud occasion for all of you. Aloha and congratulations.

Mr. Chairman, I consider it an auspicious sign that these are the first nominations that I will be required to consider as the newest member of this Committee. In looking over the background material for this hearing, I was struck by the nominees' qualifications to be members of the Court of Veterans Appeals.

Mr. Ivers' record speaks for itself—a decorated Army officer and Vietnam veteran. Mr. Ivers obtained a law degree from American University. Thereafter, he served in a variety of executive branch positions that required extensive legal expertise, including Chief Counsel of the Federal Highway Administration, Director of the Department of Transportation Safety Review Task Force and, most recently, General Counsel of the Veterans' Administration.

I say this with a smile, but for one lapse in judgment when he worked for 3 years as Chief Counsel of the Republican National Committee, his record is beyond criticism. [Laughter.]

Mr. Ivers will be a credit to the bench.

Mr. Steinberg's record is no less stellar. While he has pursued a career path different from Mr. Ivers, one through the legislative rather than executive branch, his qualifications are equally outstanding.

After graduating from the University of Pennsylvania Law School in 1963, he clerked for Warren Burger on the U.S. Court of Appeals. In 1964 he began 5 years of employment as an attorney for the Peace Corps, eventually achieving the position of Deputy General Counsel.

In 1969 he came to Capitol Hill to work for what was then the Senate Labor and Public Welfare Committee, now the Committee on Labor and Human Resources. There, from 1971 to 1973, he was first exposed to veterans' matters as Counsel to the Subcommittee on Veterans' Affairs, the precursor of this Committee.

When the Subcommittee on Veterans' Affairs was elevated to a full Senate committee in 1977, Jon became the panel's first Chief Counsel. For the 13 years since then, of course, he has been Chief Counsel and Staff Director to the Committee, either in the minority or majority.

I said aloha in my opening statement because I first had the pleasure of meeting and working with Jon in April 1987, when the Committee held an important oversight hearing in Honolulu on health-care issues. I participated in that hearing at the invitation of my distinguished predecessor, the late Spark Matsunaga, who chaired the proceedings.

While I was only a guest member of the panel at that time, I obtained firsthand experience of Jon's outstanding personal and professional qualities. I am convinced that the hearing, which directly resulted in major improvements in the type and level of health care provided to veterans, would not have been nearly the success it was if we had been without the benefit of Jon's assistance.

That experience convinced me that veterans—at least Hawaii veterans—were fortunate to have someone like Jon in a key staff position.

Mr. Chairman, I realize that Jon's nomination has not been without controversy. A number of negative news articles have been published attacking his integrity and professionalism. However, everything that I know and have learned about Jon Steinberg, including the FBI background report I have personally read, contradicts these allegations.

Jon's long record of advocacy in behalf of veterans is unparalleled. In one way or another, he has been directly or indirectly responsible for all of the major veterans' legislation of the last 20 years. Perhaps his most enduring achievement remains the rejuvenation of the Veterans' Health-Care Service in the early 1970s, when he was instrumental in increasing health-care employment by 65,000 FTEEs, enabling the VA to address the needs of the thousands of disabled veterans returning from Vietnam.

Mr. Chairman, I need say little else concerning Mr. Steinberg's fitness for the robe. If I may, however, I would like to quote Spark

Matsunaga in concluding my remarks in support of Jon's nomination. In a letter to Secretary Derwinski shortly after learning that Jon was being considered for a seat on the Court of Veterans Appeals Sparky wrote, "I can honestly say that I have never met anyone with a more intimate knowledge of veterans' programs or a greater concern for their welfare. I have received nothing but the soundest, most impartial advice from him on all issues concerning veterans, even when such advice may have contradicted his own position on a particular matter. His record of public service, fine legal mind, and personal integrity make him an ideal candidate for a judgeship on the Court of Veterans Appeals. It would be a travesty if his considerable talents and wide experience could not be brought to bear in behalf of veterans who come before the new judicial panel."

Mr. Chairman, I fully support Don Ivers and Jon Steinberg for the Court of Veterans Appeals. I hope the vote to report their nominations is unanimous.

Thank you, Mr. Chairman.

Chairman CRANSTON. Thank you very much.

I will now join Jon Steinberg at the witness table to introduce a man who needs no introduction to this Committee.

STATEMENT OF HON. ALAN CRANSTON, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Chairman CRANSTON. I welcome this opportunity to testify before this Committee. It is a great honor and pleasure for me to have the opportunity to introduce Jon Steinberg this morning. The honor derives from the fact that Jon is a truly distinguished individual with a record of tremendous achievement on behalf of America's veterans. The pleasure comes from knowing that serving as a judge on the Court is something Jon very much wishes to do in order to continue his record of service.

I sit here today not only as a Senator grateful for Jon's more than 21 years of dedicated and effective service, but also as a close friend delighted to have had the opportunity to share such a large part of his life.

In over two decades in the U.S. Senate, I have made countless personnel choices. The decision to hire Jon ranks as one of the very wisest. In the true spirit of public service, he has dedicated his entire career to making this country a better place for all of us, and most especially for veterans and their families. I believe he has succeeded.

I would like to take just a few moments to touch on the highlights of Jon's background. I think it shows the excellent qualifications he possesses to sit as a judge on the U.S. Court of Veterans Appeals.

Jon graduated from Cornell University in 1960. He then attended the University of Pennsylvania Law School, from which he graduated cum laude and as a member of the Order of the Coif in 1963.

He served as Research Editor of the University of Pennsylvania Law Review, and a student article he wrote for the law review was published in 1962.

After law school graduation, Jon served for 11 months as law clerk to Judge Warren Burger of the U.S. Court of Appeals for the DC Circuit, who, of course, went on to become the Chief Justice of the United States.

After completing his clerkship, Jon served 4½ years at the Peace Corps, first as an attorney-advisor, and then as Deputy General Counsel. In 1969, I hired Jon as Counsel to the Subcommittee on Veterans' Affairs which, at that time, was a Subcommittee of the Senate Committee on Labor and Public Welfare. From 1971 to 1973, Jon was Counsel to both the Subcommittee on Railroad Retirement and the Subcommittee on Human Resources, and he continued as Counsel of the Subcommittee on Human Resources until 1977.

In 1977, when I had the honor of assuming the chairmanship of the Veterans' Affairs Committee, Jon became the Committee's Staff Director and Chief Counsel. He remained in that position until 1981, when the Republican Party became the majority party in the Senate and Jon became Minority Chief Counsel and Staff Director. In 1987 the Democrats once again became the majority party, and Jon resumed the position of Staff Director and Chief Counsel—a position he has held since.

Jon has proven himself to be a tireless advocate for veterans—all veterans—and the testimony submitted today by many of his colleagues will certainly bear this out.

I cannot begin to describe the tremendous positive impact Jon has had on veterans' law and programs and the enormous wealth of knowledge he has regarding veterans' laws and their history in the Congress. His nomination to be a judge on the Court of Veterans Appeals is testament to his brilliance, his creativity, his energy, and his hard work. I know he will be a most distinguished judge.

At the clear risk of slighting many significant accomplishments, I would like to mention just a few of the major legislative efforts to which Jon, in assisting me and the Committee, has contributed very substantially. These include:

The Rehabilitation Act of 1973, on which he worked long and hard as Counsel to the Human Resources Subcommittee and which reformed the Federal/State Vocational Rehabilitation Program and made great strides in the areas of accessibility of public facilities for persons with disabilities and the civil rights of persons with disabilities.

The 1974 establishment of the statutory Veterans' Readjustment Appointment Authority.

The 1978 legislation establishing the Improved Pension Program for needy wartime veterans and survivors.

The various public laws in the 1970s and 1980s which provided specific eligibility for VA health care to, among others, World War I veterans, veterans who are housebound or in need of aid and attendance, ex-POWs, and veterans exposed to ionizing radiation or Agent Orange.

The efforts which other veterans' advocates and I exerted to ensure adequate funding for VA health-care programs which, since 1970, has resulted in an increase of over 60,000 VA health-care personnel.

The 1979 measure that established the Readjustment Counseling Program for Vietnam-era veterans—the well-known Vet Center Program.

The 1980 modernization of VA's Vocational Rehabilitation Program for service-disabled veterans.

Veterans employment measures enacted in 1980 and 1988 which established stable statutory funding formulas for disabled veterans' outreach program specialists and local veterans' employment representatives.

The 1984 legislation establishing the Montgomery GI Bill Program of educational assistance and the 1987 legislation making it permanent.

The Department of Veterans Affairs Act of 1988, which elevated VA to Cabinet status.

The Radiation-Exposed Veterans Compensation Act of 1988, which provided compensation for veterans stricken with certain cancers who had been exposed to radiation from nuclear detonations.

The 1988 Veterans' Judicial Review Act which, of course, established the U.S. Court of Veterans Appeals.

And the 1989 restructuring and stabilization of the VA Home Loan Guaranty Program.

In summary, Jon has played a major role in the development of every piece of veterans' legislation enacted by the Congress in the last 21 years, as well as many significant measures in other areas on which he has assisted me during that time. But these laws tell only part of the story.

I believe much of Jon's legacy of dedicated service can be found in the revived spirit and sense of well-being of a Vietnam veteran receiving counseling at a Vet Center; in the restored walk of a soldier who lost a leg in combat and has benefited from VA prosthetics research; in the college diploma, earned through the GI bill, proudly displayed on the wall of a veteran's new home, purchased with the help of a VA loan guaranty; in the monthly compensation check received by a soldier disabled in service; in the life-saving surgery performed at a VA medical center; in the gratitude of a veteran who has had his benefit claim validated by an independent court of law; and in countless other ways, large and small, Jon has helped this Nation repay the debt it owes to its veterans.

Throughout his work in the Senate, Jon's commitment to the veteran, his devotion to duty, his love of country, and his total dedication to the institutions of our democracy and to fair play for all individuals have never been in question.

Jon, before closing, I wish to acknowledge your lovely and gracious wife, Shellie, who has been a source of comfort, strength, and support for you over the years. We both owe her a great debt of gratitude for her patience and understanding for all those long hours you put in on the Committee's and on the Senate's business.

Jon, I feel honored to have had the opportunity to work with you the last 21½ years. You have served me beyond the call of duty again and again. I know the many times you have stayed in the Capitol all night long preparing for a morning hearing or markup that was vitally important to our veterans. You have performed great service to this Nation's 27 million veterans and their fami-

lies, to whom we all owe so much. You have performed great service for all Americans.

This Committee could never expect to have a more highly-qualified nominee to serve as a judge on this important new Court.

Senator DECONCINI. Thank you, Chairman Cranston.

Chairman CRANSTON [presiding]. I am going to do something not on the agenda at this point. Bill, please come over. [Applause.]

It is obvious that today is a significant one for the staff of this Committee. There is, however, a less obvious reason why today is significant for our fine staff.

This morning I am delighted to make a surprise presentation to Bill Brew. Bill, I know this is truly a surprise for you, but if you have the energy to stand after your traumatic week, would you please join me. We are delighted that Bill's wife, Sandy, has been able to be with us this morning, and I'd like to ask her to join us up here also.

Bill Brew began working for this Committee a little over 12 years ago. For the last 3½ years, he has been the Committee's Deputy General Counsel. He has been a truly invaluable member of the very fine staff that I have been so fortunate to be assisted by for these last dozen years. With Jon Steinberg and Ed Scott, Bill comprises the senior management team for the Committee staff. Himself a distinguished Vietnam veteran, he has always brought a special sensitivity and perspective to his work, and thus to our work.

We often joke about the fact that, although we had been laboring in the Senate since 1971 to establish the Readjustment Counseling Vet Center Program for Vietnam Veterans—including the efforts of my great friend, Max Cleland, who is with us this morning—it was only after Bill got here that we were able to enact that legislation—we did it the very next year.

In addition to his superb efforts to establish, expand, and maintain the Vet Center Program for the last 11 years, Bill was the Committee's mainstay on the judicial review legislation that brings us together this morning for this confirmation hearing. Bill contributes, and has contributed, to the effectiveness of the Committee in many, many other ways as well—especially as the resident "Father Confessor."

Bill Brew is a first-rate attorney and Committee staff professional. He brings to his work an extraordinary blend of intellect, judgment, common sense, human warmth and compassion, and political savvy. I feel very fortunate to have had the benefit of his 12 years of work.

Now, in recognition of Bill Brew's long and distinguished service, the Secretary of the Senate has asked me to present him with this Certificate of Appreciation and 12-year service pin from the U.S. Senate.

Bill—and Sandy, too, who in her own right, deserves a special award for perseverance and just the right measure of understanding but not too much—I am delighted to make this presentation to you both. [Applause.]

While we are at it, I want to recognize the presence this morning of Jane Scott, Ed's wife. Jane, we had a similar ceremony for Ed a year or so ago and since you couldn't be here for that one, I want

to tell you now how much we appreciate all of your support for Ed who does an absolutely outstanding job as Committee General Counsel.

Finally, on another happy Committee note, I want to say a word to our indispensable Chief Clerk, Sharon Blackman. Sharon, on behalf of the Committee, I want to extend to you, all of our very best wishes on your forthcoming marriage. A week from Saturday, Sharon will marry Van Sherwood in Delaware. Sharon, you know we all wish you the very best and great happiness.

Thank you, Bill. We all appreciate your loyal and effective work.

We are going to depart from the schedule in order to receive the testimony of Secretary of Veterans Affairs Ed Derwinski, accompanied by Deputy Secretary of Veterans Affairs Tony Principi, who must return to their offices to run their department. They have been patiently waiting for this opportunity.

Ed and Tony, it is always a pleasure to see you. Thank you very much for finding the time in your schedules to be with us today for this moment.

TESTIMONY OF HON. EDWARD J. DERWINSKI, SECRETARY, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY HON. ANTHONY J. PRINCIPI, DEPUTY SECRETARY

Secretary DERWINSKI. Thank you, Mr. Chairman. I'll be very brief.

We did submit a statement——

Chairman CRANSTON. If you'll excuse me, we are going to administer an oath to everyone today, so please stand and raise your right hand.

Do you swear or affirm that the testimony you will give to this Committee at this hearing today and any written answers or statements you provide to this Committee in connection with this hearing will be the truth, the whole truth, and nothing but the truth?

Secretary DERWINSKI. I do.

Mr. PRINCIPI. I do.

Chairman CRANSTON. Ed, please proceed. Thank you very much for being with us.

Secretary DERWINSKI. Mr. Chairman, we have submitted a statement some days ago. I'd ask that the statement be included in full in the hearing.

I would just, if I may, for brevity's sake, touch on the highlights.

I am pleased to join you this morning, along with my Deputy Secretary, Tony Principi, to support the nominations made by the President for these associate judgeships of Mr. Donald Ivers and Mr. Jonathan Steinberg. I believe they are both eminently qualified to sit on this new Veterans Court, and they will contribute greatly to its deliberations.

Don Ivers is a consummate professional, whose advice I freely sought and respected while he was serving at the Department. He will bring to the Court a broad knowledge of law. He is incisive, articulate, a solid attorney—just the kind of attorney we need serving as a judge on this new panel.

He will also bring to it a tremendous knowledge of the VA claims process. He knows the limitations. He knows the functions.

He is extremely well qualified by his experience to serve on this bench.

In Jonathan Steinberg I think we have a man who has a deeper understanding of the laws of the authorizing statutes and purposes of our benefits program than anyone else. In my mind he would handle judicial responsibilities with such unusual ability and background that his service on the Court would be one of total excellence. I think he brings a type of experience that is unique. As you indicated, Senator Cranston, a good deal of the law that we have dealing with veterans came from the mind and pen and energy of Jon Steinberg.

He has an intellect that we all admire. He has deep analytical skills. I think it will serve him well on the bench.

I must say that in the 17 months that I have served at the VA, I have never for a moment questioned his commitment to ensuring that veterans receive the measure of gratitude this Nation owes to them.

He is thoroughly professional and extremely competent.

I am, therefore, pleased to recommend to this Committee the nomination of both of these gentlemen, and yield at this time to Mr. Principi.

Mr. PRINCIPI. Thank you, Mr. Secretary.

Mr. Chairman and members of the Committee, it is certainly an honor for me to join with our Secretary in support of the nominations of Don Ivers and Jon Steinberg to the newly-established Court of Veterans Appeals.

I certainly echo the comments of the Secretary. I have had the great privilege of working very closely with Don and Jon over the years in my capacity as Minority Staff Director and Chief Counsel of this Committee. Although I didn't work on a day-to-day basis with Don, certainly our dealings were most professional. He has a keen intellect, a superb knowledge of title 38 of the United States Code, and has worked very, very diligently over the years in support of the Department. He is a true friend of veterans.

I did have the opportunity to work very, very closely with Jon, as you all know, on the Committee as Jon's counterpart. Jon and I clearly had our moments of disagreement. But the one thing I found, after 10 years of service in this city, is that it is important that you stake out a position and fight and work hard to have that position prevail. But in the final analysis, you work toward a compromise in the interest of establishing good public policy—policy that is good for veterans. That was always the case in my dealings with Jon Steinberg. He is a true advocate and tremendous, tremendous lawyer. We worked very hard and very closely, and I certainly support his nomination to the Court.

[The prepared statement of Secretary Derwinski appears on p. 138.]

Chairman CRANSTON. Thank you, Ed and Tony, very, very much. I have some very brief questions.

Ed, would you please very succinctly summarize your active duty service in the Armed Forces?

Secretary DERWINSKI. Mine? I was drafted in early 1945. I had basic training at Camp Maxie, TX—which, by the way, no longer

exists. They don't even have a plaque in my honor there. [Laughter.]

I served in the Pacific theater. I was discharged in the fall of 1946 as a corporal. [Laughter.]

Chairman CRANSTON. Congratulations. [Laughter.]

Tony, would you do the same very briefly?

Mr. PRINCIPI. Yes, Mr. Chairman. I was a 1967 graduate of the U.S. Naval Academy at Annapolis; destroyer duty in Vietnam, River Patrol Force; Admiral's staff in Newport, RI. The Navy then sent me to law school. I was in the Judge Advocate General Corps for 5 years. I resigned my active duty commission as a lieutenant commander—didn't make corporal—and stayed in the reserves and retired as a commander.

Chairman CRANSTON. Congratulations to you, too.

Tony, would you please describe briefly the length and nature of your professional and personal relationship with Jon Steinberg?

Mr. PRINCIPI. Jon and I had a very close professional relationship commencing in 1984, I believe, when I assumed responsibilities as Majority Chief Counsel and Staff Director of this Committee. Jon, of course, was the Minority Staff Director and Chief Counsel. We developed a very close working relationship. At times it was very spirited, but, again, we were simply always able to work out our differences. We developed a very good personal and professional relationship over the years and to this day.

Chairman CRANSTON. Do either of you have any questions about Jon's integrity?

Secretary DERWINSKI. No, sir. None at all.

Mr. PRINCIPI. No, sir.

Chairman CRANSTON. Ed, would you place any credence in an allegation that Jon Steinberg has opposed any individual's Presidential nomination based on his supposed animosity toward Vietnam veterans?

Secretary DERWINSKI. No. No, sir.

Chairman CRANSTON. Tony.

Mr. PRINCIPI. No, sir.

Chairman CRANSTON. Ed, have you, in your dealings with Jon Steinberg, ever witnessed any indication that he harbors a negative impression of or a negative attitude toward Vietnam veterans?

Secretary DERWINSKI. No, sir.

Chairman CRANSTON. Tony.

Mr. PRINCIPI. No, sir.

Chairman CRANSTON. Ed, have you ever detected any basis whatsoever for suspecting that he has ever borne any ill will toward any Vietnam veterans or any category of Vietnam veterans, or has ever believed Vietnam veterans were somehow incapable of exercising leadership or holding major positions in the Government?

Secretary DERWINSKI. No, sir.

Chairman CRANSTON. Tony.

Mr. PRINCIPI. No, sir.

Chairman CRANSTON. Ed, do you have personal knowledge of any anti-Vietnam war activities by Jon Steinberg?

Secretary DERWINSKI. Absolutely not. No, sir.

Mr. PRINCIPI. No, sir.

Chairman CRANSTON. Ed, a little over a year ago your nomination was pending before this Committee. As I recall, you were not too delighted with me or Jon Steinberg at that time. Why are you now supporting Jon's nomination?

Secretary DERWINSKI. Because, first of all, circumstances change. When one is under a bit of fire your vantage point and your reactions are different. Also, I have been around Washington long enough to know that today's antagonist could be tomorrow's best ally. Philosophically speaking, that's Washington. I thank you and Mr. Steinberg for giving me a well-deserved grilling, and I thank you for the support that I have had from the both of you since I have been Secretary.

Chairman CRANSTON. Thank you very much.

Frank, do you have any questions?

Senator MURKOWSKI. Yes, Mr. Chairman.

Mr. Principi, do you feel that during the confirmation process of now-Secretary Derwinski that there were leaks from this Committee to the media concerning the process?

Mr. PRINCIPI. There were allegations of leaks, but I have no firsthand knowledge that there were any leaks by any staff member to the press. Certainly there were an awful lot of allegations along those lines. But I can't attest to the accuracy of those allegations, Senator.

Senator MURKOWSKI. So your answer is neither yes nor no?

Mr. PRINCIPI. I know of the rumors and the assertions about the leaks, but I have no firsthand knowledge of whether they, in fact, came from the Committee.

Senator MURKOWSKI. And you have no opinion?

Mr. PRINCIPI. I have no opinion.

Senator MURKOWSKI. Mr. Secretary, do you feel that there were leaks from this Committee to the media concerning your past activities, associations, or what not, when it came time for consideration of your nomination to be Secretary of the Department of Veterans Affairs?

Secretary DERWINSKI. I have no evidence of such leaks; however, I will tell you, frankly, that, having been in Washington as long as I have, I understand that leaks are sort of a way of life. I am neither at any point surprised, nor, at the time, was I really upset if there was anything like that. That was as Washington as cherry pie.

Senator MURKOWSKI. So you just take it as part of the process of doing business?

Secretary DERWINSKI. I take it as part of the process, and I also take it as one of the realities of life in this city. But I have no evidence of any leaks from this Committee.

Senator MURKOWSKI. So the question of the appropriateness is not germane in your own mind; it is just a reality?

Secretary DERWINSKI. Yes. I'd like to feel that I am a philosopher. I understand—I think I understand the way the games are played. But I also understand that I was treated in a very professional fashion and the end result was totally acceptable to me.

Senator MURKOWSKI. Are you referring to the press as professional?

Secretary DERWINSKI. No. I am referring to this Committee and the members and staff.

Chairman CRANSTON. Could I ask a question? Ed, you, as a matter of fact, have no evidence or knowledge of any leaks in connection with your nomination?

Secretary DERWINSKI. No, sir.

Chairman CRANSTON. Thank you.

Senator MURKOWSKI. I have no further questions, Mr. Chairman.

Chairman CRANSTON. I thank you both. You can go back and run the Department, as you do very well. Thank you very much.

Senator SIMPSON. Mr. Chairman, are leaks some kind of an art form here? [Laughter.]

Secretary DERWINSKI. I wouldn't comment on art unless I checked with Senator Helms. [Laughter.]

Chairman CRANSTON. According to the rules of this Committee, all nominees are required to take an oath that is slightly different.

So, Don and Jon, would you both please stand and raise your right hands?

Do you swear or affirm that the testimony you will give to this Committee at this hearing today and any written answers or statements you provide to this Committee in connection with this hearing will be the truth, the whole truth, and nothing but the truth?

Mr. STEINBERG. I do.

Mr. IVERS. I do.

Chairman CRANSTON. Would you please submit now, under the oath just taken, the materials you have provided to the Committee in preparation for this hearing?

[The materials referred to appear on pp. 74–124.]

Chairman CRANSTON. Don, would you proceed with your opening statement at this time?

TESTIMONY OF DONALD L. IVERS, NOMINEE TO BE ASSOCIATE JUDGE OF THE U.S. COURT OF VETERANS APPEALS

Mr. IVERS. Yes, Mr. Chairman.

Mr. Chairman, Senator Murkowski, members of the Committee, it is with a deep sense of pride that I appear before you today as the President's nominee for the position of Associate Judge on the U.S. Court of Veterans Appeals.

I wish to express my sincere appreciation to Senator Domenici for his appearance here on my behalf and to Senator Warner for his statement on my behalf. I also wish to thank those who have supported me for this nomination, and thank the Committee staff for their courtesy and professionalism as we have prepared for this hearing.

I am proud to have my son Kevin here in the hearing room with me today, and I am also proud of the fact that the reason that my daughter Ami is not here is that she is training with the National Whitewater Kayak team and will ultimately compete, as a member of the team, this summer for the World Whitewater Kayaking Championship.

I am hopeful that this Committee will, at the conclusion of this hearing, see fit to report my nomination favorably to the full Senate for confirmation.

For almost 20 years I have been engaged in the practice of law as an advocate and a litigator. I have represented individuals, corporations, organizations, and Government agencies before the courts and before this and other committees of the House and Senate.

One of the goals before me throughout that time has been the judiciary—to move from the role of advocate into a judicial role, to have the opportunity to utilize the knowledge and skills that I have been able to develop during my career to fairly and impartially apply the law.

It is true that during my tenure as General Counsel of the Veterans' Administration and as an advocate I opposed judicial review as then presented. Judicial review in the overcrowded Federal court system does not offer adequate relief to veterans who feel that they have been denied relief by the VA system.

The compromise crafted by this Committee and your counterparts in the House creating the Court of Veterans Appeals presents an opportunity to provide a complete system of justice for veterans and their families. The prospect of participating in the creation and implementation of that system is exciting and challenging to me.

As a veteran, I have a deep and abiding appreciation for the price that has been paid by veterans to earn the benefits provided us by a grateful Nation. I also have a full understanding, as a result of my experience before this Committee and with the Department of Veterans Affairs and Veterans' Administration, of the absolute necessity that those benefits be fairly and impartially administered.

Members of the Committee, my credentials are before you, as are my responses to the prehearing questions. I welcome any further questions that you may have, and I thank you for the opportunity to appear here today.

Chairman CRANSTON. Jon Steinberg, would you now please make your statement?

TESTIMONY OF JONATHAN R. STEINBERG, NOMINEE TO BE ASSOCIATE JUDGE OF THE U.S. COURT OF VETERANS APPEALS

Mr. STEINBERG. Thank you, Mr. Chairman.

At the outset I want to thank you very much for your very gracious words of introduction and express my appreciation, as well, to Senator Mitchell, Senator DeConcini, Senator Simpson, Senator Thurmond, and Senator Akaka for their very gracious and, I'm sure, not totally deserved words.

Mr. Chairman, I am tremendously honored to have received the nomination by the President of the United States and to appear as a nominee before this Committee today. You, Mr. Chairman, especially, and Senator Simpson, Senator Thurmond, Senator DeConcini, Senator Rockefeller, and Senator Specter, as well as Senators Mitchell, Graham, and Jeffords and the late Senator Matsunaga, have been extraordinarily supportive of me over the many months that this nomination was under consideration and review in the White House, right up to this hearing this morning. I will never forget all of the many kindnesses and hours of assistance you all have so graciously extended to me.

I am equally grateful to my family for their firm and enduring support throughout these last many months, and am particularly happy that my wife, Shellie, and my son, Andrew, who has just graduated from UCLA Law School, are able to be here for this hearing this morning. I wish my daughter, Amy, could be with us as well, but, as you already noted, Mr. Chairman, she is far more productively occupied by her travels in Europe.

I want to thank, as well, Ed Scott and Bill Brew for having done so much for so many years to help make the staff of this Committee as effective and responsible as possible, and for having contributed so much excellent counsel, extraordinarily hard work, and wise perspective in connection with my work on this Committee staff.

I owe the same personal debt of gratitude as well, in more general terms, to Susanne Martinez, Senator Cranston's Legislative Counsel, and Roy Greenaway, Senator Cranston's Administrative Assistant.

Finally, I want to express my deep personal appreciation to Sharon Blackman, the Committee's Chief Clerk, and Charlotte Hughes, my Executive Assistant, for their friendship and many hours of generous assistance.

I am certain that without the love and total support of my wife and my children and the invaluable assistance and counsel of my colleagues and friends, this day would never have arrived.

I want also to express my very deep gratitude to my friends and colleagues who have come here this morning in support of my nomination, three from out of town: to Secretary Ed Derwinski and Deputy Secretary Tony Principi; to former Administrator Max Cleland, all the way from Atlanta; to former Deputy Administrators Chuck Hagel and Tom Harvey; to former Chief Medical Directors Don Custis and John Gronvall; to Disabled American Veterans National Adjutant Butch Joeckel; and Paralyzed Veterans of America Executive Director Jack Powell; to former VFW Executive Director and former National Commander Cooper Holt; to former House Committee Staff Director and former National DAV Commander Oliver Meadows, who came from Texas; and to former Peace Corps General Counsel Bill Josephson from New York—to all of these gentlemen, my warmest appreciation and deepest thanks.

I am also indebted to former Chief Justice Warren Burger, former Administrator Harry Walters, and former Peace Corps Director Sargent Shriver, for their generous statements for the record.

As to my intentions if confirmed, Mr. Chairman, in the judicial position to which I have been nominated, I pledge to this Committee and all of America's veterans that I will, if confirmed, do all I can to dispense justice with compassion and evenhandedness and with a firm commitment to following and applying the law as Congress has written and intended it. Those would be my guiding principles.

Thank you, Mr. Chairman, and members of the Committee.

Chairman CRANSTON. Thank you very much.

Senator SPECTER, do you have an opening statement?

OPENING STATEMENT OF SENATOR SPECTER

Senator SPECTER. I am delighted to join the Committee at this important session. I have worked extensively with Mr. Steinberg in his role on this Committee and have a very high regard for him and support his nomination.

All that I know about Mr. Ivers is positive.

This is a very important Court. We have to see to it that the nominees are of high caliber, and that is my objective. Regrettably, there are competing hearings this morning, as there are at all times, so that I will be in and out of the hearing, but I intend to follow the process very closely here.

Thank you very much, Mr. Chairman.

Chairman CRANSTON. Thank you very much, Arlen.

I thank both of you for your very fine and concise opening statements. At the outset I have questions to which I would like each of you to respond. I'll start with Jon on this one.

What are your views on the deference that an appellate tribunal should give to the conclusions and reasoning of an executive branch agency in deciding a claim for benefits from that agency?

Mr. STEINBERG. I think that deference should be given to the findings of fact by the Board of Veterans Appeals, in this case, but the determination of the applicable law should be made without any particular deference by the reviewing court.

Chairman CRANSTON. Don.

Mr. IVERS. I would be inclined to agree with Jon. The terms of the statute parallel the terms of the Administrative Procedures Act. Case law and practice by the courts in dealing with the Administrative Procedures Act requires that due consideration be given not only to questions of fact, but questions of law.

However, having said that, deference does not mean binding effect, and the Court becomes the ultimate arbiter and interpreter of the law as it is presented to them or as they have it before them.

Chairman CRANSTON. I'd like to start with you, Don, on this question. Would you ever have any hesitance in reversing an unlawful VA action in a case that is within the jurisdiction of the Court of Veterans Appeals and properly before the Court?

Mr. IVERS. No, sir, I would not.

Chairman CRANSTON. Jon.

Mr. STEINBERG. No.

Chairman CRANSTON. Don, would you please describe the aspects of your record that would lead a veteran or a veteran's dependent or survivor seeking assistance from the Federal Government to believe that you would give his or her case sympathetic consideration?

Mr. IVERS. I believe that my experience as General Counsel of the Veterans' Administration, my experience as a member of the military and as a veteran, and my general reputation within the community would be a basis upon which an individual could feel that they would get from me a fair, impartial, and compassionate hearing.

Chairman CRANSTON. Jon, may I ask you the same question?

Mr. STEINBERG. I would cite the 21 years of work and advocacy on behalf of veterans that you outlined in your statement and that

many of your colleagues mentioned earlier this morning—particularly the work that culminated in the establishment of an opportunity for judicial review and legal representation for veterans in their benefits claims, and also the work that I was privileged to do with you in the 1970s in connection with the enactment of Legal Services Corporation Act and the effort to ensure that all citizens of this country have opportunities for legal representation without regard to their income.

Chairman CRANSTON. Jon and Don, you both have extensive experience in veterans' law—Don as General Counsel for the VA, and Jon as Chief Counsel and Minority Chief Counsel of this Committee and otherwise. Because of your respective backgrounds, I asked each of you in prehearing letters to describe the approach you would take, if confirmed, in situations where a case before you on the Court involved an issue or case that you had worked on in your previous capacities. I sent each of your responses to the other so you could benefit from the other's reflections on these issues. I believe both of your responses were generally very good ones, indicating a sensitivity to the appearance of impartiality that could arise if you were to judge matters that you had expressed opinions on previously.

However, your responses indicated you might follow different approaches in some essentially similar situations. I believe that the recusal issue is very important. I would encourage both of you to continue to reflect on this matter with open minds.

Would you both agree, if confirmed, to continue to study and discuss this issue, and, to the extent you consider it appropriate to do so, consult with the Chief Judge and others in the development of your policies in this area? Don.

Mr. IVERS. Yes, sir.

Chairman CRANSTON. Jon.

Mr. STEINBERG. Yes, sir.

Chairman CRANSTON. Don, the next few questions are for you.

As VA's General Counsel, you testified in opposition to judicial review of VA decisions denying claims for benefits. How do you reconcile your desire to be a Judge on the Court of Veterans Appeals with the position you took in opposition to judicial review?

Mr. IVERS. As I indicated in my opening statement, Mr. Chairman, I presented my views to the Committee as an advocate. I advocated the position of the Administration, and I strongly felt at the time—and, in fact, do still strongly feel—that the Federal court system is not the place for benefits decisions.

The establishment of this Court has created a system that will offer veterans a full and complete hearing and a full and complete measure of justice. I feel that it is an excellent compromise, it is an excellent Court, and, again, it is challenging and exciting to have an opportunity to serve on the Court.

Chairman CRANSTON. When you testified at the Committee's April 28, 1988, hearing on judicial review, you submitted written testimony printed on page 492-93 of the hearing record, which said, in regard to VA's adjudication system, "Internal quality programs assure that VA decisionmaking is kept to a high standard of accuracy. We are unaware of any administrative process operated by

any other Federal agency that is more proclaimant, simple to use, or more equitable, regardless of the presence of judicial review."

Does that statement indicate you would have a predisposition to defer to VA decisions?

Mr. IVERS. No, it does not.

Chairman CRANSTON. What extent would you give deference to the Board of Veterans Appeals with respect to its findings of fact and its interpretations of laws and VA regulations?

Mr. IVERS. Only that deference required by law and by courts as they have applied the provisions of the Administrative Procedures Act to the regulations, statutes, rulings, etc., of other agencies.

Chairman CRANSTON. Thank you very much.

I will now turn to Jon.

You and I have worked very closely together in the role of veterans' advocate and in Congress. What do you see as the major philosophical differences between the role you have been performing so effectively in Congress and the role of a Court of Veterans Appeals judge? And how do you assess your ability to make the necessary adjustments?

Mr. STEINBERG. I think that training as an attorney prepares one to look at both sides of the issue. A good advocate—which I hope I was in my role in the Congress and in my assistance to you—has to understand the other side in order to advocate effectively.

Although at times I think I have been in the role of advocate for veterans' benefits, I have also had to, at times, say, "I don't think that is warranted." Perhaps on occasion I have so advised you to that effect.

So, even in the role of advocate, there are clearly limits.

My belief is that my opportunity to understand both sides of the issue—which I hope I have manifested in my work here—would enable me to be fair and objective in carrying out the judicial duties for which I have been nominated.

Chairman CRANSTON. Jon, Senator Murkowski, in his opening remarks, noted that you have been accused of "being an anti-Vietnam war activist during that period." Would you please comment on that statement?

Mr. STEINBERG. I am at a loss to understand the basis for those allegations. I can state categorically to the Committee under oath today that I have never at any time participated in a protest or demonstration or other activity in support of or against the U.S. foreign policy with respect to the Vietnam conflict.

Chairman CRANSTON. Thank you.

Jon, at this point—and to all of you—I'd like to refer to the June 11 letter I received from Sargent Shriver, the first Director of the Peace Corps. It is offered in support of Jon's nomination and his observations as to Jon's abilities and work in the Peace Corps.

Sarge writes, "Jon, as a young man, was a most valued member of the Peace Corps General Counsel's staff. As such, he was one of the most diligent, tenacious, and effective advocates the Peace Corps ever had."

He added, "When Jon worked for me in the Peace Corps, there was never any reason to question his high ethical standards. Indeed, he was regarded as a model of punctilious behavior by all

of his colleagues. I'm sure that he has continued to adhere to those standards while employed by the U.S. Senate."

The full letter will be made part of the record of this hearing.

[The letter from Sargent Shriver appears on p. 125.]

Chairman CRANSTON. Frank Murkowski, your turn.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Ivers, I'd like to explore some of the criticisms made against you that you cannot be an impartial judge because of opinions and views that you have held as General Counsel to the VA. I'm not speaking about your legal expertise, your education, or experience, but rather of the question of impartiality. I wonder if you would care to comment on that general criticism?

Mr. IVERS. Yes, sir. My role as General Counsel for the Veterans' Administration, and then as Acting General Counsel for the Department of Veterans Affairs, was exactly that. I was the attorney and the chief legal officer for the agency. The agency was my client. I represented the agency. I represented the positions of the agency and the Administration.

I am, by training and almost 20 years of practice, a litigator and an advocate. I feel that I carried out those responsibilities to the fullest extent of my professional capability while I was in that role.

That in no way hampers my ability to consider and grant impartial and objective review of any claim presented to me.

As Jon pointed out, one of the hallmarks of an advocate is the ability to look at, study, and understand both sides of an issue. And, as a judge, you are then required to arrive at a decision based upon your study of both sides of the issue and not just to represent one side or the other.

Senator MURKOWSKI. When you were General Counsel of the VA, were you confident that the General Counsel's opinions you issued on veterans' benefits questions were based on sound legal precedent? Or was there an interpretation of your own in there?

Mr. IVERS. There was no interpretation of my own. They were based on sound legal precedent.

Senator MURKOWSKI. Gentlemen, I am in a little different position than is often the case. For the most part, my time in the Committee has been spent with Senator Cranston, and my role has been to oftentimes defend the position of the Administration and it was the responsibility of the Chairman to proceed with the hardball questions. My obligation today I think is to proceed with the hardball questions. I'm going to ask some tough questions, and I hope that it is understood that these questions are proposed and posed to clear the air rather than leave unaddressed various rumors concerning certain aspects of the nominees.

I'll first address my question to Mr. Steinberg.

As I already indicated to the Secretary and Mr. Principi, during my association on this Committee there have, from time to time, been accusations concerning leaks to the media. Mr. Steinberg, there is an article that appeared in the Stars and Stripes, the National Tribune, on 30 October 1989, titled unflatteringly, "Dump Steinberg someplace else."

The article goes on to say, "Take, for example, the recent attacks on Republican nominees Edward Derwinski and Donald Gregg. These attacks were characterized by strong personal assaults on

the nominees during which press stories questioning the nominees' credibility, personal integrity, and patriotism were planted with the liberal reporters—primarily in the west coast newspapers. Once published, these attacks were converted into intense personal questioning by Cranston during confirmation hearings."

Jon, a few weeks before the Secretary of the Department of Veterans Affairs, now Secretary Derwinski, was nominated to his present position, he was, of course, attacked in the press, primarily in the State of California. Can I and members of this Committee have your assurance that neither you nor anyone acting under your direction knowingly passed any information to specifically a reporter from the Oakland Tribune from California or another paper? There is further reference that a reporter writes in the December 28, 1988, article "Nazis, Dictators, and Derwinski."

My question specifically is: can you give us your assurance that no one acting under your direction nor yourself knowingly passed on any information relative to the nomination of Secretary Derwinski?

Mr. STEINBERG. I can give you categorical assurance that I never did anything to in any way provide information to the press in connection with Secretary Derwinski's nomination. In agreement with the Chairman, both of us adopted a policy of not talking to the press while that nomination was pending in order to try to avoid exactly the kind of situation that has been raised in the articles to which you make reference.

Senator MURKOWSKI. The other part of your question was anyone under your direction.

Mr. STEINBERG. There is one instance that occurred, as far as I am aware, in which, after Senator Cranston wrote a letter to the President of the United States following the appearance of the editorial in the Oakland Tribune to which I think you are making reference, that may have been December 28, following that editorial, Senator Cranston wrote a letter to the President asking that the matters raised in the Oakland Tribune editorial be investigated by the FBI.

Senator MURKOWSKI. Who wrote that letter?

Mr. STEINBERG. I don't believe, Senator Murkowski, in connection with my responsibilities to Senator Cranston, to be able to provide him with frank and candid advice, that it is appropriate for a senatorial assistant or Committee employee to discuss specifically work that they may or may not have done in connection with a Senator. That letter is a matter of public record. That letter was sent by Senator Cranston to the President. But I do not believe it is appropriate for me, both because of the confidential relationship that I believe a Senator must have with his staff, and because of certain emanations from attorney/client privilege, for me to discuss either advice that I specifically gave Senator Cranston, specific work that I did for Senator Cranston, or information that he imparted to me in the course of that confidential relationship.

I might——

Senator MURKOWSKI. Well, let me ask you this—and you can answer it yes or no.

Mr. STEINBERG. Excuse me one——

Senator MURKOWSKI. Did you help formulate any portion of that letter?

Chairman CRANSTON. I'm going to interject at this point.

Senator MURKOWSKI. It is a matter of public record, the letter.

Chairman CRANSTON. Let me make two statements.

First, in regard to all three nominations that are now being discussed—Derwinski, Gregg—and which was the third?

Senator MURKOWSKI. Mr. Ivers. I've asked the question of Mr. Ivers.

Chairman CRANSTON. In regard to the Derwinski and the Gregg nominations——

Senator MURKOWSKI. That's correct.

Chairman CRANSTON [continuing]. A great deal of material appeared in the press when the nominations were made that related to matters that we then thought it was necessary to explore. We did. That appeared in the press at the time the nominations were made—the press commenting on and giving rumors or facts concerning the record of the nominees.

Frank, I am not going to allow questions here that take the form of asking a staff member what advice or actions he takes in private consultation with me.

First, I make decisions about whatever staff advice I act on. Second, I, like any other Senator, ask staff members for their advice on matters when needed, and I must have the benefit of that advice in order to function most effectively. Asking a staff member like Jon, or anyone else, to disclose that advice would impair the Senator/staff relationship. I will not allow it. I have precedent to rely upon in taking that position.

Senator MURKOWSKI. Mr. Steinberg, can I have the same assurances regarding the topic of the article which was "The Main Stream Cabinet Should Be Shelved," which appeared in the San Francisco Chronicle on January 1, 1989? And, "Derwinski Tipped South Korea on Defector and Then Denied It," which appeared in the Los Angeles Times on January 12, 1989. The specific question is: did you provide, or, under your guidance, do you have any knowledge of providing any information that was developed in those specific articles?

Mr. STEINBERG. No, sir.

Chairman CRANSTON. Did you respond?

Senator MURKOWSKI. Yes, he did.

Mr. STEINBERG. Yes. I said "No, sir."

Chairman CRANSTON. Your time is up.

Senator DeConcini.

Senator DECONCINI. I have no questions, Mr. Chairman.

Chairman CRANSTON. Senator Simpson.

Senator SIMPSON. Mr. Chairman, I thank you.

Obviously, this issue of being an anti-Vietnam war activist has been out there. We know that. And we know that at the time of the most active involvement you were then clerking for Warren Burger during those years of 1963 and 1964, and then working for the Peace Corps from 1964 to 1969, and then the formerly-designated Senate Committee on Labor and Public Welfare. During any of that time did you ever take any actions or make any public state-

ments or write any articles or letters or papers expressing an opinion regarding U.S. involvement in Vietnam?

Mr. STEINBERG. No, sir.

Senator SIMPSON. Nothing?

Mr. STEINBERG. Absolutely nothing. And if I might just clarify one thing: during the period of time that I was working for the Peace Corps I was very mindful of the Peace Corps' policy with respect to public statements by Peace Corps volunteers serving overseas that might in any way involve them in commenting either on host-country political matters or on U.S. political matters.

I thought it was my obligation, serving on the staff of the Peace Corps in Washington, to follow the same injunction and to do whatever I could to maintain the apolitical stance of the Peace Corps, and I did follow it in every respect.

Senator SIMPSON. That was Dean Rusk's admonition to not make the Peace Corps an instrument of foreign policy, wasn't it?

Mr. STEINBERG. Those are exactly the correct words.

Senator SIMPSON. And so you knew that policy and you knew you were in that position and you were totally sensitive to it and totally adhered to it?

Mr. STEINBERG. That's my belief, Senator. Yes.

Senator SIMPSON. And what was your position? I leave this to you as to how you obviously answer it. What was your position regarding U.S. involvement in the war in Vietnam?

Mr. STEINBERG. As best as I can recall—and that is a long time ago—throughout the 1960s I was a strong supporter of President Johnson. In 1968, when the Gene McCarthy campaign began, in the middle of which President Johnson withdrew, then followed by Robert Kennedy's campaign, my recollection is that my views with respect to the Vietnam war shifted in approximately the same way as I believe the views of the American people shifted in and around that time period. That's the best of my recollection.

Senator SIMPSON. Do you feel that your personal convictions regarding the wisdom or the appropriateness or the morality of U.S. involvement—and I hear your description, which is apt. It was something I observed, as I lived in Cody, WY—that your personal convictions of U.S. involvement in Vietnam would in any way interfere with the exercise of your impartial judgment in fulfilling your duties on this Court or would in any way cause you to tend to be biased against the Government in cases that would come before you?

Mr. STEINBERG. No, sir, I do not.

Senator SIMPSON. You would approach each case with an open mind and with judicial temperament, as we describe it?

Mr. STEINBERG. Yes, sir, I would.

Senator SIMPSON. You have been intimately involved with the drafting of the United States Code as it relates to veterans in this country. There is no one that has left more personal an imprint upon the United States Code with regard to veterans' legislation—drafting, negotiating, revising. Many of the laws now on the books regarding veterans' benefits and compensation and services and presumptions and all the things we have talked about—I see you smiling at the word "presumptions." We are going to look into that thoroughly. [Laughter.]

But it would be understandable to me if you were to feel that you had a very special perspective on title 38 and congressional intent that other judges on the Court of Veterans Appeals would not have. Now, I ask you: do you feel that you would be able to approach consideration of each case without any bias resulting from your long years of—and we'll use the word "advocacy," because I think that was there, and I don't think you have tried to disengage from that description. Not always, but certainly there—advocacy on the Senate Committee on Veterans' Affairs? Do you think you could do that?

Mr. STEINBERG. I believe I could view each case and apply the law to the facts of each case. I might just note, if I might, Senator, that in my June 11 letter to Senator Cranston responding to the series of questions that he put to me in writing with respect to disqualification, I said, with respect to legislative history, on page 4, "Again, each such question would have to be considered on its particular facts, and it would not be appropriate for me to utilize, in deciding the case, any knowledge of legislative history that was not part of the publicly-available, documented record." I feel very strongly about that.

Senator SIMPSON. Well, you are going to be in there with a very unique group of people, and it ought to be a spirited bunch. I think it will be, indeed, and a yeasty kind of a situation. [Laughter.]

And that's good, because judges should do that, in my mind.

Just a final question—well, first, you both talked about recusing yourselves. Are you really just saying that you are just using your good common sense, both of you, as the nominees here to recuse yourself from cases of conflict? You feel confident that you can do that? Do you?

Mr. IVERS. Yes.

Mr. STEINBERG. I certainly do. I think that the United States Code, in section 455 of title 28, does set forth a series of specific tests as well as an overall standard calling for disqualification where a judge's impartiality might reasonably be questioned, and there is a substantial amount of case law that has built up since 1974 when that statute was amended. I have reviewed some of that, and I believe that I could apply that statute and the interpretations of it in a fair and objective fashion.

Senator SIMPSON. Under this statute, you might find yourself recusing yourself from a case involving questions of law, and then you might find that also the case more remotely on questions of fact. Are you ready to do that either way?

Mr. STEINBERG. Yes, sir, I am.

Mr. IVERS. Yes, Senator Simpson. I might add that the guidelines that are contained in the statute and in the judicial cannons of ethics are clear: they do leave the determination to the individual judge. However, it is my understanding that the Federal court system does have a mechanism available to it which provides advice and counsel in questions of recusal—a body made up of other judges. That precludes the necessity to bring another judge on the same court into a possible question of conflict.

The mechanism is there. It has been utilized. There is a fairly extensive body of advice to judges and judicial nominees with respect to the issue of recusal.

Senator SIMPSON. A final question: without any question, many of the cases that are going to come before you will involve some benefit determinations for Vietnam veterans. Now, I have been on this Committee for 12 years. That is obviously a war that we, as a society, cannot seem to put behind us. This Committee, under the chairmanship of Al Cranston, myself, and Frank Murkowski I think have responded magnificently to the Vietnam veteran. That's my view. And yet we get a spate of movies and docudramas and books on the subject which seem totally intent on portraying everyone who ever served in the Vietnam era as a walking time bomb.

When you consider there were 8.5 million in the military at that time, very few were ever involved in a combat situation—like most of our wars. I was a veteran and a member of the VFW, and I never was in a foreign war in that sense at all. I was just there at the end of the Army of Occupation. There are millions of us like that. And I had the benefit of having three remarkable counsel here—I had Ken Berquist, I had Tom Harvey, I had Tony Principi. My own Chief of Staff on my staff in Wyoming is a combat veteran of Vietnam. They get tired of that—plain, damn tired of every Vietnam veteran being portrayed as a victim.

Now, I'd like to be assured that you would approach each case on an individual basis, that you have no predisposition to regard Vietnam veterans or any other veterans, merely by virtue of their service, as being victims. Many of them are damn proud to have served and they don't feel like victims.

If we ever have people who were in the service who think of themselves only as victims, we are in a lot of trouble in our future.

So I am just asking: may I have your assurance on that point, that we do not consider any veteran as a victim, but as a loyal person who served their country in time of need with great gratitude, and even that gratitude has been carefully disclosed and measured and given to the Vietnam veteran? That's my question.

Senator STEINBERG. You have my assurance, Senator.

Mr. IVERS. And mine also.

Senator SIMPSON. Thank you.

Chairman CRANSTON. Thank you very much.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

To continue, Jon, with the particular line of questioning with regard to leaks from the Committee, do you know a former director of ACTION, a gentleman by the name of Mr. Thomas W. Pauken?

Mr. STEINBERG. I know of him.

Senator MURKOWSKI. And I would enter this in the record. He claims that you specifically passed information from his military record to a reporter of UPI in an attempt to derail his nomination. Do you know whether his claim has any validity as far as specific——

Mr. STEINBERG. Yes, I do.

Senator MURKOWSKI. Would you care to respond?

Mr. STEINBERG. Since I don't consider, despite the dialogue that occurred earlier between Secretary Derwinski and Senator Simpson, that leaking is in any way part of my official responsibilities, I'd be glad to respond to that. I did not do that and would not have done it.

Senator MURKOWSKI. Thank you.

Mr. Ivers, if confirmed, what action do you intend to take regarding cases which involve subjects on which a General Counsel's opinion was issued during your tenure as General Counsel? How do you intend to identify these cases?

Mr. IVERS. Senator Murkowski, in the prehearing written questions that topic was covered substantially, and I have submitted written responses to those questions. I might add, at this point, that the number of General Counsel opinions relating to benefits decisions in cases pending before the Board of Veterans Appeals during the 5 years that I was General Counsel is quite small. It constitutes something like seven one-hundredths of 1 percent of the total potential caseload from which we may receive appeals while I am on that Court.

What I intend to do and what I have already begun to take steps to do is to identify those cases and set them aside. I will establish with the Office of the Clerk of the Court a means or a system whereby, if any of those cases appear before that Court, they will be flagged, I will be alerted to that, the parties will be alerted, and a determination will be made by the parties as to whether or not they should seek my recusal, and by me as to whether or not I should recuse on my own motion.

Senator MURKOWSKI. Thank you.

Jon, I think you commented on this to a question that was perhaps asked by the Chairman with regard to any activity or participation on any pro-Viet Cong or North Vietnamese demonstrations that took place, associated with any activity that you might have engaged in. I refer to some information provided to the Committee that in 1970, in May, there was evidently a large number of Peace Corps volunteers—I gather they were activists—and that the allegation is that they were somehow in sympathy with the North Vietnamese and Viet Cong. They took over the offices of the Peace Corps headquarters in Washington, DC, and they unfurled a Viet Cong flag from an upper-story window. Do you have any knowledge of that event?

Mr. STEINBERG. Your statement was the first I had ever heard of any such situation.

Senator MURKOWSKI. You have no knowledge of that?

Mr. STEINBERG. I might say, also, Senator Murkowski, that I was not previously asked any questions relating to pro-Viet Cong activities. If you wish to ask me them I'd certainly be glad to answer them.

Senator MURKOWSKI. I think you have answered the question, but this is information concerning a demonstration that took place in May of 1970 where the activists in sympathy took over the Peace Corps offices in Washington, DC.

Mr. STEINBERG. Just for the record, Senator, I was employed by the Committee on Labor and Public Welfare under Senator Cranston's direction at that time. I left the Peace Corps in March of 1969.

Senator MURKOWSKI. In August of 1964 we had the Gulf of Tonkin incident which really precipitated our large-scale military involvement, of course, in Vietnam. What would be your response to the veteran who stated in a letter, which I would enter into the

record, as well, that "It is my understanding that during the Vietnam conflict Mr. Steinberg joined the Peace Corps," the implication being the other alternative was to join the military?

[The letter appears on p. 126.]

Mr. STEINBERG. I did not join the Peace Corps. I was not a Peace Corps volunteer. I was an employee of the Peace Corps as an attorney beginning in the fall—September of 1964. I served in that capacity for 4½ years until I left in March of 1969 to continue my public service as an employee of the U.S. Senate. I believe I have served this Nation to the best of my capacity in an honorable fashion during that entire period of public service.

Senator MURKOWSKI. What were your duties associated with the Peace Corps?

Mr. STEINBERG. I was initially an attorney-advisor in the Office of the General Counsel. And, in connection with that job, I was called upon to render legal advice and, on occasion, policy advice in connection with a broad array of issues which arose—many of which dealt with problems of Peace Corps volunteers overseas.

For a substantial period of that time I was the attorney-advisor for what was then called NANESA—North African, Near East, and South Asia—that particular region of the world where Peace Corps volunteers were serving. At that time the Peace Corps' overseas programs were divided into four regions .

And then I became Deputy General Counsel in 1968 and served in that capacity for approximately a year before I came to work on the Labor and Public Welfare Committee with Senator Cranston.

Senator MURKOWSKI. So in August of 1964 that's when you joined the Peace Corps?

Mr. STEINBERG. September, I believe.

Senator MURKOWSKI. Excuse me.

Mr. Ivers, what deference will you accord a Board of Veterans Appeals decision which, when it is ultimately made, relied primarily on the accuracy of the VA claims adjudication process? In other words, when a Board of Veterans Appeals decision is made, are you going to rely primarily on the accuracy of the VA claims adjudication process or—how do you evaluate your decisionmaking authority under this scenario?

Mr. IVERS. My decisionmaking authority and responsibility as a judge would be to base my decision on the law and on the case as presented to me, based upon that which is before the Court.

Senator MURKOWSKI. What deference will you accord the decisions of the Board of Veterans Appeals in interpreting the VA regulations?

Mr. IVERS. As I said earlier, only that deference that is required by law. The term of art is "deference," and it is not binding on the Court. The Court has the responsibility to interpret and apply the law.

Senator MURKOWSKI. This is a question for both the nominees. I think we all strongly believe in the independence of the judicial branch of the Government. Do you believe it is appropriate for a judge to discuss policy matters, including any issue which he may eventually rule upon, with members of the executive or legislative branches? I would ask Jon Steinberg first.

Mr. STEINBERG. No, sir.

Senator MURKOWSKI. Mr. Ivers.

Mr. IVERS. No, sir.

Senator MURKOWSKI. Do you believe there are constitutional or ethical limitations on the amount of and type of communication between the judicial branch and the branches of Government? If so, please briefly describe those limitations.

Mr. IVERS. I believe there are certain limitations—those that are established by the Constitution and those that are established by law and the ethical guidelines with respect to the amount and type of communication that can and should take place between the judiciary and the executive and the legislative branches.

Senator MURKOWSKI. Mr. Steinberg.

Mr. STEINBERG. I am in agreement with that answer.

Senator MURKOWSKI. Gentlemen, may I have your commitments that you will not discuss any VA or VA-related matters with members of the Senate or their staffs or VA officials other than judges on the Court? That includes other members of Congress.

Mr. STEINBERG. Yes. I will give you that commitment.

Mr. IVERS. I'll give you that assurance.

Senator MURKOWSKI. My time is up, Mr. Chairman.

Chairman CRANSTON. I'd just as soon you proceed.

Senator MURKOWSKI. OK.

There is a matter that we have attempted, Mr. Chairman, to address relating to a simple inquiry directed to the Selective Service concerning Mr. Steinberg's status during the mid-1950s. There is a gentleman here, Mr. Chairman, Mr. Williams, who is General Counsel to the Selective Service. We have been advised that, for reasons I can't explain, State Selective Service records for those born in 1939 are—I think the word was "unrecoverable." Now, the difficulty I have, Mr. Chairman, is: there is a good deal of confusion surrounding this specific inquiry, because evidently there are some records relative to a change in draft status back in November 9 of 1964, to be specific. They are able to tell us that the draft status changed to classification of 3-A at that time, and I have been advised that the interpretation of that is marriage, children, or some hardship.

But we have probed into obtaining the draft classification during that time. There are evidently two sources of that information: one is in the records area, which I guess is the archives of the Selective Service; and the other is in the Selective Service Office. There seems to be confusion. We discussed it briefly, Mr. Chairman, prior. I would leave it to your call as to whether or not you want to discuss this with Mr. Williams. I have asked, of course, the FBI to provide this information. They are in the process of still attempting to get further information. I think it is appropriate that the minority side have this information for the record. If you'd like to discuss it, or if you would like Mr. Williams to appear as a witness, it is——

Chairman CRANSTON. I certainly don't want to engage in any star session closed discussions of this matter, so——

Senator MURKOWSKI. Fine.

Chairman CRANSTON [continuing]. If you want Mr. Williams to come as a witness, call him as a witness.

Senator MURKOWSKI. Fine. I appreciate that. Would you care to swear him in?

Chairman CRANSTON. Certainly.

Would you identify yourself, sir?

Mr. WILLIAMS. Henry N. Williams, General Counsel, Selective Service.

Chairman CRANSTON. Do you swear or affirm that the testimony you will give to this Committee at this hearing today and any written answers or statements you provide to this Committee in connection with this hearing will be the truth, the whole truth, and nothing but the truth?

Mr. WILLIAMS. I do.

Chairman CRANSTON. Thank you.

TESTIMONY OF HENRY N. WILLIAMS, GENERAL COUNSEL, SELECTIVE SERVICE SYSTEM

Senator MURKOWSKI. First of all, I want, Mr. Williams, to assure you that we are not talking about personalities here. That is not the intent of my line of questioning. My concern is not the nominee. I am concerned with the legitimate process of getting the information, which is part of our responsibility and I think represents our obligation, just as it would be if the situation were reversed.

Can you tell us something about the status of the information that we have concerning the records of those born in 1939?

Mr. WILLIAMS. Yes, sir. I think I can shed some light in terms of the course of normal business. I have no personal knowledge of the records to which you refer.

We are talking about the Selective Service records of Local Board 126 in Pennsylvania. The records are physically stored at the Federal Records Center in Philadelphia. The Selective Service System has control of access within law, to be sure. The Federal Records Center is the actual custodian.

The only records we have, sir—I use the word "we" in the sense of the System—with respect to persons who registered after 1948 are the registration card and the classification record. The registration card, as you might suspect, is a 5- by 8-inch card with name, address, date of birth, a person who would know where you are, color of eyes, color of hair—if any—and the like. [Laughter.]

The classification record is a page—I would suppose it is 14 to 15 by 30 inches—something like the old-fashioned hotel register, which lists the registrants' names, selective service number, and various dates of various administrative actions, such as: the date in which the classification questionnaire was mailed; when it was returned; the date of any classification which the registrant may have received; the date of being ordered for a physical examination, if any; the date on which it occurred, if it did occur; any administrative appeals which might occur.

This classification record was simply a listing by years of birth. The classification record which was made for Local Board 126 with respect to the year of birth 1939 has not been found.

Senator MURKOWSKI. May I interrupt you there?

Mr. WILLIAMS. Certainly, sir.

Senator MURKOWSKI. How much of 1939 has not been found?

Mr. WILLIAMS. All of 1939 has not been found. None of 1939.

Chairman CRANSTON. In what area? Just this draft board?

Mr. WILLIAMS. We are referring only to this Local Board, sir, 126.

Senator MURKOWSKI. Do you have any idea of how many 126 would have?

Mr. WILLIAMS. No, sir. I don't know that. That could be ascertained easily. I don't know it.

Senator MURKOWSKI. Well, maybe those records are gone, too.

Mr. WILLIAMS. Well, I was referring to the complete listing, sir. What is available—and I believe it has been furnished to this Committee, and I believe also to you, sir—is the page of the replacement or reconstructed page which lists the classification in 1964 to which you made some reference a moment ago. Obviously, that is a reconstruction. That was obviously not the original entry. Presumably, it was reconstructed on the basis of the registrant's file folder, which did exist up until the registrant obtained either age 26 or 35, depending on whether he received a deferment.

It is pure mystery as to where the record is.

Senator MURKOWSKI. Are there other years that are missing?

Mr. WILLIAMS. Not to my knowledge, sir. In connection with 1939, this was the only registrant we were pursuing.

Senator MURKOWSKI. Well, now, is there any explanation? What would be the alternative explanations that we might consider?

Mr. WILLIAMS. Sir, that obviously is a matter of speculation, but I have been told—I don't remember it personally from the newspapers, but I have been advised by one of our former employees who—as a matter of fact, she is an employee now, but not at national headquarters—who was an employee of a local board in Upper Darby, PA that there was vandalism at Local Board 126 during the Vietnam period. Obviously, if there was vandalism—if there was—if it was sufficiently directed or, indeed, just haphazardly could have zeroed in on the year of birth 1939.

Senator MURKOWSKI. I have here—and I would enter it into the record—a Xeroxed copy of the Selective Service System record which I assume, Mr. Williams, you can identify.

Mr. WILLIAMS. Yes, I can, sir.

Senator MURKOWSKI. And——

Mr. WILLIAMS. That is a classification record.

[The classification record appears on pp. 131-133.]

Senator MURKOWSKI. Can you explain where the information that is on here came from?

Mr. WILLIAMS. No, sir.

Chairman CRANSTON. Who would bear that responsibility, would be able to tell us where the information that is on here came from?

Mr. WILLIAMS. Senator, there is no doubt in the world in my mind that the person who entered it is living. After all, that wasn't too far along. [Laughter.]

Senator MURKOWSKI. I see.

Mr. WILLIAMS. I don't mean to be curt, sir, but, after all, 1964 was not—some of us don't think it was very long ago. [Laughter.]

Frankly, I assume that the investigative services of our country could locate those persons.

Senator MURKOWSKI. That sounds like a pretty big chore. Are you the best expert available on this subject? [Laughter.]

Mr. WILLIAMS. Sir, it depends on what your questions are. If you are——

Senator MURKOWSKI. Well——

Mr. WILLIAMS. There are not too many of us around who have greater experience. I'd certainly be glad to provide a list of all of my acquaintances.

Chairman CRANSTON. As I understand it, this record shows that Jon Steinberg was the second person to register at the Board in 1957 for the group with the year of birth 1939; is that correct?

Mr. WILLIAMS. Yes, sir.

Chairman CRANSTON. Second person to register.

Mr. WILLIAMS. To be sure, Senator, there might have been a brief interruption in the sense of getting piled up in the wrong order, but essentially what you say is correct.

Senator MURKOWSKI. Is that information reconstructed like this information?

Mr. WILLIAMS. Senator, I don't know. I assume not, though, and I'll tell you why. If you will notice, if you have it in front of you, sir, you'll see the so-called fourth element.

Senator MURKOWSKI. Fourth element?

Mr. WILLIAMS. Second column, sir. If you will notice at the top of the page there, "Selective service number 36-126-39." Thirty-six is the arbitrary number for the State of Pennsylvania; 126 is the local board in question; 39 is the year of birth; and the fourth element is simply chronological listing—as Senator Cranston referred, the order in which they registered.

Senator MURKOWSKI. Well, the timeframe from when the individuals on this list—the name of the registrants—were 18 and actually registered for the draft, up until this last and only notation, which is November of 1964, is what is missing?

Mr. WILLIAMS. That is correct, sir. If I may point out, we do not know from this document the date of registration.

Senator MURKOWSKI. We can assume from your interpretation that Mr. Steinberg was the second one in this particular Board, 126, to register?

Mr. WILLIAMS. Of that year of birth.

Senator MURKOWSKI. So you assume that would be at the time he was 18?

Mr. WILLIAMS. Fairly soon after would be my assumption. Yes, sir.

Senator MURKOWSKI. Is there more than one source of records? In other words, in Philadelphia in the area of recordkeeping, are all the old records in that one place, or are there——

Mr. WILLIAMS. For that particular State, yes, sir.

Chairman CRANSTON. Your time has expired.

Senator DeConcini I believe has to leave, and he hasn't had an opportunity, so we will now yield to him.

Senator DECONCINI. Thank you, Mr. Chairman.

Mr. WILLIAMS, can you tell us what your background is and who you are, please, for the record?

Mr. WILLIAMS. I'd be glad to, sir. I am a country lawyer from the State of Tennessee. I have been General Counsel of the Selective Service System since June of 1976. I became the Assistant General Counsel of Selective Service on July 13, 1970. I moved up to Deputy

General Counsel, in 1976 became General Counsel, and have been such ever since.

For 2 years between 1966 and 1968 I was in the Conscientious Objector Section of the Office of Legal Counsel, Department of Justice, in obviously selective service matters.

Senator DECONCINI. Thank you. But you are General Counsel now for the Selective Service?

Mr. WILLIAMS. Yes, sir.

Senator DECONCINI. And is it your area of jurisdiction that we are asking questions of here about boards' records? Is that something that you are given jurisdiction over?

Mr. WILLIAMS. It is certainly not administrative control, but in terms of historical knowledge at the time, procedures, yes.

Senator DECONCINI. And where do you get your information, like the records have been lost or not available? That comes from——

Mr. WILLIAMS. The Records Center at Philadelphia.

Senator DECONCINI. From the Records Center at Philadelphia. So you made an inquiry into——

Mr. WILLIAMS. Yes, indeed.

Senator DECONCINI [continuing]. As to Board 126?

Mr. WILLIAMS. Sir, unhappily it is not quite that simple. We began this with respect to the name in question. We had only name, date of birth, and address at which he lived at the time he registered initially. We were unable—"we" refers to the Records Center, sir—the Records Center was unable to locate his registration card, which is the key——

Senator DECONCINI. By "his" you mean Mr. Steinberg?

Mr. WILLIAMS. Yes. The registration card is the key to getting into the registration record. You appreciate there is no indexing of this thing. It is just a continuation.

Later—and I'm referring to days, not in terms of months—Mr. Steinberg provided his selective service number, which was a Godsend in this business, and the Records Center was able to locate what you have in front of you, sir.

Senator DECONCINI. Do your records show how many was registered in that Board? Do you have any idea?

Mr. WILLIAMS. No, sir. I do not have that information.

Senator DECONCINI. And do you know of anything that leads you to believe anything improper occurred with the loss of these records?

Mr. WILLIAMS. Senator, I have absolutely no knowledge of any impropriety.

Senator DECONCINI. Impropriety whatsoever? Do you know why, or did the Records Center tell you, other than the vandalism reference that someone made to you, why they don't have the records?

Mr. WILLIAMS. The Records Center, sir, did not report the vandalism.

Senator DECONCINI. Yes, I understand. Excuse me for including that. But what did the Records Center tell you?

Mr. WILLIAMS. The Records Center has absolutely no explanation.

Senator DECONCINI. None. Is that uncommon in your experience, Mr. Williams, that sometimes the Records Center doesn't have, No. 1, the records from a draft board of many years ago?

Mr. WILLIAMS. Senator, it is not unique, but happily it is not a frequent occurrence.

Senator DECONCINI. Not frequent, but it does happen?

Mr. WILLIAMS. It does happen, I regret to report. Yes, sir.

Senator DECONCINI. And have you reviewed cases of lost records before?

Mr. WILLIAMS. Yes, sir. Reviewed in the sense that it couldn't be found.

Senator DECONCINI. That's what I mean.

Mr. WILLIAMS. Yes. Do I remember them? I certainly do, sir.

Senator DECONCINI. Have you ever found any impropriety on any of these lost records?

Mr. WILLIAMS. Senator, that is entirely a matter of speculation.

Senator DECONCINI. I mean as to you. Have you ever found any?

Mr. WILLIAMS. No.

Senator DECONCINI. And you stated you have no reason to think there is any impropriety in relation to——

Mr. WILLIAMS. Absolutely not. I have no basis——

Senator DECONCINI [continuing]. This Board?

Mr. WILLIAMS [continuing]. Of that suggestion.

Senator DECONCINI. Are you familiar with Mr. Steinberg at all, Mr. Williams?

Mr. WILLIAMS. I first saw him a couple of hours ago when I came in the room.

Senator DECONCINI. Thank you. And the inquiry regarding this, did this come from the FBI?

Mr. WILLIAMS. What do you mean by "this," sir?

Senator DECONCINI. The inquiry to you regarding these records. How did you get involved in this? Who asked you——

Mr. WILLIAMS. The initial inquiry came to the Records Manager of the Selective Service System. Senator, I simply don't remember, because it never occurred to me to jot it down as such when I was told about it. I can clarify that if I may look at the Committee roster.

Senator DECONCINI. I'm just interested in who made the inquiry regarding his selective service.

Mr. WILLIAMS. My information, sir, is that the initial inquiry came to the Director of Public Affairs—which is not necessarily the best way to make the initial inquiry, but perfectly understandable and frequently occurs—Mr. Brodsky, by a Mr. Victor F. Reston.

Senator DECONCINI. Who is identified as the gentleman next to me.

Mr. WILLIAMS. He is shown here as the General Counsel of the Minority Staff.

Subsequently, sir, a request was received at the Selective Service——

Mr. SCOTT. Excuse me. What was the date of that first request?

Mr. WILLIAMS. I do not know, sir. It can be known; I just don't know it.

Mr. SCOTT. Can you supply it for the record?

Mr. WILLIAMS. I would be glad to, sir.

[Subquently, Mr. Williams furnished the date of March 20, 1990.]

Mr. WILLIAMS. A subsequent request—a repetition, shall we say—was from a Mr. Thomas T-I-G-H-E, who is listed here as Associate Counsel on the Majority Staff.

Mr. SCOTT. Do you have the date of that?

Mr. WILLIAMS. No, sir.

Mr. SCOTT. Could you supply that for the record?

Mr. WILLIAMS. Yes, sir.

Mr. SCOTT. Thank you.

[Subquently, Mr. Williams furnished the date of June 8, 1990.]

Mr. WILLIAMS. I'm quite sure, subsequent to the inquiries to which I have referred, a request was made by the FBI. Happily in this context, we were already working on the initial inquiries.

Senator DECONCINI. The FBI did make an inquiry, Mr. Williams?

Mr. WILLIAMS. Yes, sir, it did.

Senator DECONCINI. And would you provide us the date of that, please, for the record?

Mr. WILLIAMS. Yes, sir.

[Subquently, Mr. Williams furnished the date of June 11, 1990.]

Senator DECONCINI. And what did you turnover to the FBI? The same material?

Mr. WILLIAMS. Actually, I did not turnover anything to them.

Senator DECONCINI. What did the Selective Service turnover to them?

Mr. WILLIAMS. If I may explain, sir. Within a few hours—perhaps it was the next day—we received the item which you have in front of you. I did, as promised, inform the agent who had called me essentially the general course of facts that we have referred to here today, that the only classification record we have is what is before you, and it discloses a classification on November 11, 1964, and what it was, and a brief statement of the qualifications for that classification.

So far as I know, this document has not been furnished to the FBI. The agent was satisfied with what I told him.

Senator DECONCINI. Thank you, Mr. Williams.

Mr. Williams, I want to know, if you can tell me, going back to—you indicated the rumor that there was a vandalism in 1964. Did you say that's what you were told?

Mr. WILLIAMS. I don't believe I wanted to characterize it as rumor. One of our employees said over the phone, sir, from her memory, that there was vandalism at that Board.

Senator DECONCINI. How long ago was that?

Mr. WILLIAMS. Do you mean the vandalism or the conversation?

Senator DECONCINI. The conversation with your employee.

Mr. WILLIAMS. This week.

Senator DECONCINI. This week?

Mr. WILLIAMS. Yes.

Senator DECONCINI. And what did she tell you about that vandalism?

Mr. WILLIAMS. Sir, I did not speak with her personally. I know her. She was formerly at our national headquarters, now at our region I headquarters in Philadelphia. Back in the Vietnam era, sir, I believe she was an Executive Secretary—in any case, what you and I might think of as a Chief Clerk—of a local board at

Upper Darby, which I believe is in the vicinity of Philadelphia, but I'm not——

Senator DECONCINI. Can you disclose her name to us, Mr. Williams, please?

Mr. WILLIAMS. I certainly can: Ms. Becky Boggs, B-O-G-G-S. She is an employee—I forget her job classification, sir—at region I.

Senator DECONCINI. You did not talk to her. Who did talk to her, Mr. Williams?

Mr. WILLIAMS. Mrs. Paula Sweeney, our Records Manager.

Senator DECONCINI. What did Ms. Sweeney tell you that she said?

Mr. WILLIAMS. That Becky, as we referred to her, commented that there was vandalism in the Vietnam era at Local Board 126.

Senator DECONCINI. Was there any reference to Mr. Steinberg in this vandalism?

Mr. WILLIAMS. No, sir.

Senator DECONCINI. Was there any cause that you felt you needed to talk to Mrs. Boggs about it?

Mr. WILLIAMS. I never even considered talking with her about it. I did not anticipate this day at that time either, Senator. [Laughter.]

Senator DECONCINI. If I could just finish, Mr. Chairman?

Chairman CRANSTON. I'll yield my time to you.

Senator DECONCINI. Thank you. I'll end up here.

The discussion came through Ms. Sweeney?

Mr. WILLIAMS. Yes, sir.

Senator DECONCINI. And did she tell you anything other than what you have conveyed to us, that——

Mr. WILLIAMS. No, sir.

Senator DECONCINI [continuing]. There was vandalism in 1964——

Mr. WILLIAMS. No, sir. Nothing further.

Senator DECONCINI [continuing]. During the Vietnam era? No other details were either given or solicited from Sweeney or Boggs?

Mr. WILLIAMS. I'm quite sure she told me all she was told, sir.

Senator DECONCINI. Yes.

Mr. WILLIAMS. And that was all that she was——

Senator DECONCINI. Did you feel that was sufficient and you didn't need to pursue it any further?

Mr. WILLIAMS. I had no occasion to think of pursuing it any further. The matter of physical custody, of course, of records now is with the Records Center. Certainly the Local Board records were at Local Board 126 prior to going to the Records Center, and they are normally transferred to the Records Center either at age 26 or age 35.

Senator DECONCINI. Thank you. Now, you are sure that Mrs. Sweeney told you that Mrs. Boggs said the vandalism occurred in 1964?

Mr. WILLIAMS. No, sir. I did not say a date. And if I did, I certainly misspoke.

Senator DECONCINI. Excuse me.

Mr. WILLIAMS. I believe the expression was the Vietnam era.

Senator DECONCINI. During the Vietnam era?

Mr. WILLIAMS. Yes, sir.

Senator DECONCINI. And no one told you any date?

Mr. WILLIAMS. No.

Senator DECONCINI. And they didn't tell you any details as to how much vandalism or what it entailed or whether or not records were stolen or burned or what happened?

Mr. WILLIAMS. Absolutely not, sir.

Senator DECONCINI. So we don't know by any means that the records were even subjected to any vandalism, do we?

Mr. WILLIAMS. Senator, we don't know on the basis of that conversation. I would assume, as a taxpayer, that some investigations were made by the investigative agencies at the time, but I don't know what they were, if any.

Senator DECONCINI. You have not looked at any records?

Mr. WILLIAMS. No.

Senator DECONCINI. Nor did you feel there was any reason to look at any records based on the inquiry you had from this Committee staff or from the FBI; is that correct?

Mr. WILLIAMS. The Committee request, sir, was for the record we have. We did the best we could and stopped there.

Senator DECONCINI. That would include any investigative records that the Selective Service would——

Mr. WILLIAMS. The Selective Service System has no investigative records. Any investigation, sir, would have been——

Senator DECONCINI. Done by somebody else?

Mr. WILLIAMS. Would have been done by someone else.

Senator DECONCINI. I see. Would the Selective Service have had access to that of any investigation?

Mr. WILLIAMS. First, Senator, I was not with the Selective Service in the era that we are now talking about. I would assume that if we felt we needed to get information about the period in question that I'd get cooperation. I certainly assume so.

Senator DECONCINI. Thank you.

Mr. Chairman, I have no further questions.

Chairman CRANSTON. Thank you very much.

I'd like to place in the record a letter that I received from the Director of Selective Service, dated June 14, which states, "Dear Mr. Chairman: This is in response to a request from a member of your staff for the selective service records for Jon Steinberg. Enclosed is a copy of his classification record, the only record we have been able to locate. The requirements for classification of 3-A in 1964 are contained in 32 CFR 1622.30. A copy is enclosed." It is signed by Samuel K. Lessey, Jr. That will go in the record.

[The letter and attachments from Mr. Lessey appear on pp. 131-133.]

Chairman CRANSTON. I'd like to place what we have been discussing in historical context. If the implication—I'd like to have Senator Murkowski's attention while I make this particular statement. If the implication of at least one of his questions was that perhaps Jon Steinberg went into the Peace Corps to avoid the draft at the time the Vietnam war was on-going, the record shows that Jon Steinberg was the second person to register when he became eligible to do so and required to do so by law. That was in 1957 in August.

I guess that was not August; Jon went to work for the Peace Corps in August of 1964.

The Congressional Research Service was asked some questions about what was happening at that time with regard to the war and draftees, and indicated that few if any draftees were in Vietnam at that time. There was no particular prospect at that time that there would be a large number of draftees in Vietnam. The first significant number of draftees went to Vietnam after the first combat troops went in in May of 1965 when the 173rd Airborne went in. Large numbers of draftees did not go until the 4th Infantry went in in the fall of 1966 and in early 1967.

CRS noted that, until the mid-1960s, after Jon went to work with the Peace Corps, draft calls had been very low. They became high thereafter.

Finally, CRS stated that by 1964 "anyone who was in the draft pool but late in the pool"—as Jon was by this time, in the mid-1960s—was "too long in the tooth to have become at any risk of being drafted or of going to Vietnam."

So it seems to me that this is a wholly irrelevant matter that we are spending our time on.

Mr. STEINBERG. Mr. Chairman.

Chairman CRANSTON. Yes.

Mr. STEINBERG. Might I say something on this subject?

Chairman CRANSTON. I wish you would.

Mr. STEINBERG. First of all, I'd like to enter into the record with the Chair's permission an exchange of correspondence which I believe the Committee staff has copies of between myself and my Local Board 126, which is located at 3701 North Broad Street in Philadelphia. My letter to them of October 6, 1964, and the response to me of October 22, 1964, bearing my selective service number, signed by Marie E. Jones, Clerk of Local Board 126. I have a copy here if that is not available. Is that available to the Committee?

Chairman CRANSTON. In any event, we will place it in the record. We have a copy.

[The correspondence between Mr. Steinberg and Local Board 126 appears on pp. 134–137.]

Mr. STEINBERG. I have the original document here with the original envelope, which I would be glad to have examined. This envelope, which I had sent to my local board, contains the original of my marriage certificate and the original of the birth certificate of my son, Andrew, who is sitting behind me to my left.

Senator MURKOWSKI. What is the date of that letter?

Mr. STEINBERG. Could the Committee please provide a copy to Senator Murkowski of this material? I'd be glad to share mine with him.

This exchange of correspondence is the only record that my wife and I have been able to locate with respect to my selective service status. I really should say that my wife has been able to locate, because she found this in our basement amidst a great many papers, for which I am very grateful.

It indicates that I was classified as 2–A, which I believe is a classification status that was generally granted to law clerks during the period of my clerkship for then Judge Burger on the U.S. Court

of Appeals. And then enclosed are the two certificates that I made reference to.

The response from the draft board indicates that they are returning the certificates that I sent them. Copies of those certificates have been placed in my record, noting that those are the marriage certificate and the child's birth certificate, thereby indicating that they had records at that time. And then noting that "you will be considered for reclassification and advised accordingly." The word "reclassification" seems to suggest to me that, indeed, at that time I did have a classification.

My recollection, Mr. Chairman, is that I registered quite promptly upon becoming 18, and I believe the records so suggest as well, that I was the second person to register in 1957 at Local Board 126; that at that time I was a freshman at Cornell University and was granted what was I believe generally called a "student deferment;" that the deferment continued throughout my law school attendance; I graduated in May or June of 1963. I then studied for the bar examination. I took the bar, I believe, at the end of July of 1963, and then began my clerkship toward the end of August of that year, at which point, according to my letter—and it is the only record I have, and apparently Selective Service has no other records, and Marie Jones did not contradict any assertion I made in that letter—I had a 2-A classification.

And then, according to the selective service record, I had a 3-A classification based upon the birth of my son on July 21, 1964.

I believe that is the best reconstruction that I can provide as to my selective service history.

Chairman CRANSTON. Thank you.

Senator Murkowski.

Senator MURKOWSKI. Again, I want to stress my concern here with the inability of our recordkeeping to provide us with information that I think in the matter of the usual course of examining witnesses is appropriate.

I wonder, Mr. Williams, if you can explain the difficulty of our efforts to simply get the classification of the nominee during the time that he registered for the draft.

Now, the requirements for registration have something to do with birthdays, don't they? In other words, when you become 18——

Mr. WILLIAMS. That's correct, sir.

Senator MURKOWSKI. Would an explanation for Mr. Steinberg's position as second have something to do with his birthdate, which is, I think, the 3rd of January. So shouldn't he be probably second or first.

Mr. WILLIAMS. I would assume he was one of the first ones. Yes, indeed.

Senator MURKOWSKI. So that would explain, because of his birthday early in January, that he has to register, I assume, upon your 18th birthday, if my——

Mr. WILLIAMS. That's correct, sir.

Senator MURKOWSKI [continuing]. Memory is correct. OK. So I think it is quite appropriate that Mr. Steinberg should be at the top of that list, and he is.

The question that we have found ourselves frustrated with is the inquiry we made to the Records Center. There was a conversation with a person called Martilla who took our inquiry and said that she would return the call when she found out the information. We were simply asking for the classification.

Chairman CRANSTON. When was this?

Senator MURKOWSKI. This was 10:30 a.m. on Thursday, which was yesterday, Mr. Chairman.

And she indicated that—and as you are aware, Mr. Chairman, I indicated to you that the only question that we had in depth that we hadn't had answered was the matter of selective service records, and you acknowledged that at least sometime ago in a discussion with me. We had not gotten the information. We were coming down to the hearing. So I began to place a few calls.

Martilla took the call and said she would return the call when she found the information—hopefully maybe yet the same day before the Center closed at 4 p.m.

Then, at 3:35 p.m., we called Martilla again on the status of the request. Martilla was out of the office, but her deskmate answering the phone said their supervisor, Reesa Dawson, had the file on her desk. Dawson was gone for the day and would be available at 7:30 a.m. on Friday, June 15—today.

Are you aware of any of this background?

Mr. WILLIAMS. Absolutely not.

Senator MURKOWSKI. Now, today, Friday, June 15, at 7:40 a.m., a contact was made with Reesa Dawson, and she said that she was unable to find the information and that all future inquiries were to be referred to Paula Sweeney in Washington, DC.

Now, Paula Sweeney works for you?

Mr. WILLIAMS. She works for me.

Senator MURKOWSKI. Is that correct that that direction has been given?

Mr. WILLIAMS. I haven't the slightest idea what direction was given at your instruction. Certainly I am not disputing it; I just have no knowledge. I would say——

Senator MURKOWSKI. Well, it is immaterial. But it obviously leaves a question of whether there is a file or not, or maybe there is a file that simply has nothing more in it than what you have shown us. Is that a reasonable conclusion?

Mr. WILLIAMS. Senator, I think just a word of explanation might be useful here. The Records Center is the custodian. We control access—specifically, Mrs. Sweeney. The failures to return calls yesterday——

Senator MURKOWSKI. That's all right. I'm not——

Mr. WILLIAMS. That is from personnel not under my control.

Senator MURKOWSKI. I have no problem with that. The problem is that this void of somebody—I am more interested in your assessment of whether there is a file that has nothing in it or there is a file that has some information that we don't have——

Mr. WILLIAMS. The word "file"——

Senator MURKOWSKI [continuing]. Because of this person that said, "Oh, it is on so-and-so's desk."

Mr. WILLIAMS. Senator, the word "file" I think is likely to become confusing. What is at issue at the moment is where is a

sheet of paper such as this for the periods 1957 through 1964. The Records Center assures us that they can't find it, if it exists. Whether the local board ever sent it to the Records Center—my suspicion is it never went to the Records Center. But, in any event——

Senator MURKOWSKI. What is your suspicion?

Mr. WILLIAMS. My suspicion is that it was—the destruction occurred, if it was destroyed, at the local board and not by the Records Center. I don't think it happened in there.

Senator MURKOWSKI. You are implying vandalism, then?

Mr. WILLIAMS. No, I'm not implying vandalism at all, sir. I don't believe——

Senator MURKOWSKI. You said it was destroyed by the local board, in your opinion.

Mr. WILLIAMS. If it were destroyed.

Senator MURKOWSKI. Well, it is not there, so it is either missing, destroyed, or——

Mr. WILLIAMS. Well, sir, your question does suggest that it could have been destroyed or lost at the Records Center. Obviously, one of two places. My guess is that the record never got to the Records Center, for whatever reason.

Senator MURKOWSKI. For whatever reason. And all of—obviously, we are not just concerned here with the record, but all the records for 1939.

Mr. WILLIAMS. The book from 1939. That's correct, sir.

Senator MURKOWSKI. And, one more time, can you enlighten me how you were able to reconstruct this much of the record if there is no record?

Mr. WILLIAMS. Sir, we did no reconstruction.

Senator MURKOWSKI. Well, this particular is a Xerox or some such thing of something, or else somebody simply put this down and copied it.

Mr. WILLIAMS. Of course it is a Xerox of the full page—there are some 30 lines on the page——

Senator MURKOWSKI. Yes.

Mr. WILLIAMS [continuing]. Of the document in question.

Senator MURKOWSKI. But that document in question——

Chairman CRANSTON. Frank, can I interrupt at this point?

Senator MURKOWSKI. I'd like to have the witness answer the question.

Chairman CRANSTON. All right. One last question on this point and then we are going to go on. This witness was not scheduled. It is a great discourtesy to witnesses that have been waiting all morning.

Senator MURKOWSKI. I think, Mr. Chairman, this is reasonably pertinent.

Chairman CRANSTON. Will you answer the last question that he asked, please?

Mr. WILLIAMS. Could the reporter restate it, sir? I——

Senator MURKOWSKI. Mr. Chairman, I am not conceding that this be my last question.

Chairman CRANSTON. You can perhaps have questions later, but not at this time. Other witnesses are waiting. This is very discourteous to them, and we are going to proceed to them.

Senator MURKOWSKI. I would assume that you would give us the time on the clock remaining.

Please proceed, Mr. Williams.

Mr. WILLIAMS. Would you restate your question, Senator. I confess I got diverted.

Senator MURKOWSKI. Yes. You got involved in the little conversation we had. The question that I asked is: where did this information that we have, which is the only information we have, come from?

Mr. WILLIAMS. The sheet in the book. Now, your question really, sir, is how was that reconstituted. I don't know. [Laughter.]

Senator MURKOWSKI. Thank you, Mr. Chairman.

Chairman CRANSTON. Thank you very much.

Senator MURKOWSKI. I may have other questions for this witness.

Chairman CRANSTON. Fine. You can wait until the other people have——

Senator MURKOWSKI. If that's the price I must pay.

Chairman CRANSTON. I want to excuse the nominees temporarily from the table, but please remain for further questions.

Our next panel consists of: Max Cleland, former VA Administrator and currently Secretary of State for the State of Georgia; Charles T. Hagel, former VA Deputy Administrator; Tom Harvey, former VA Deputy Administrator; Dr. Donald Custis, former VA Chief Medical Director; and Dr. John Gronvall, former VA Chief Medical Director.

I thank you all for attending and welcome you back to these familiar surroundings.

We will administer the oath, now. I thank you all. This is truly an illustrious group.

Do you swear or affirm that the testimony you will give to this Committee at this hearing today and any written answers or statements you provide to this Committee in connection with this hearing will be the truth, the whole truth, and nothing but the truth?

[All witnesses respond I do.]

Chairman CRANSTON. Thank you very much.

I'd ask Mr. Hagel to proceed first.

Mr. HAGEL. Mr. Chairman——

Chairman CRANSTON. Excuse me. Since Max has arrived, I'll let him go first.

Max, would you please raise your hand?

Do you swear or affirm that the testimony you will give to this Committee at this hearing today and any written answers or statements you provide to this Committee in connection with this hearing will be the truth, the whole truth, and nothing but the truth?

Mr. CLELAND. I do.

Chairman CRANSTON. Thank you very, very much. Would you please proceed, Max? Welcome back to this Committee where you have spent many, many hours and days and months.

TESTIMONY OF MAX CLELAND, FORMER ADMINISTRATOR OF VETERANS' AFFAIRS, VETERANS' ADMINISTRATION

Mr. CLELAND. Yes, sir, Mr. Chairman. I kind of feel like Yogi Berra—that it is deja vu all over again. Twenty-one years ago it

was my pleasure to come before a Committee that you chaired with serious grievances about Veterans' Administration treatment of the wounded coming back from Vietnam. I was one of those. One of the few real sensitive and aware voices that I was able to find in town was yours and that of Jonathan Steinberg.

I think that over the last 21 years, as I have been more and more involved in veterans' issues from the point of view of initially health care, ultimately the putting together of a new GI Bill for Vietnam veterans, ultimately as I became head of the Veterans' Administration working with you and this Committee and Members of the Congress for the implementation and putting together of the Vet Center Program, to the questions dealing with Agent Orange, and now the questions dealing with the Court of Veterans Appeals, there has been no one in America more strong and forthright in the aid of veterans—and particularly Vietnam veterans—than Jon Steinberg.

Those of us who know Jon think that it is poetic justice that he hopefully would now be sentenced for an indefinite period of time to try to determine the laws that he wrote. [Laughter.]

We like that idea very much. We also like him.

In all seriousness, Mr. Chairman, it is an honor and a personal privilege some 21 years later, after working with him, to come before you and support him for this high office. He is eminently qualified to be appointed by the President, and I think it is a compliment to the country and to the Court of Veterans Appeals that he would be willing to serve.

So I just wanted to add my support to the nomination, and I'm sure that the Committee will do the right thing.

Thank you very much.

[The prepared statement of Mr. Cleland appears on p. 138.]

Chairman CRANSTON. Thank you very, very much.

Mr. Hagel.

TESTIMONY OF CHARLES T. HAGEL, FORMER DEPUTY ADMINISTRATOR OF VETERANS' AFFAIRS, VETERANS' ADMINISTRATION

Mr. HAGEL. Mr. Chairman, members of the Committee, good afternoon.

I have a statement that I have given the Committee staff. In the interest of time, let me see if I can very briefly summarize.

I first became acquainted with Jon Steinberg during my tenure as Deputy Administrator of the Veterans' Administration in 1981-82. Since then, I have had an opportunity to work with Jon and his staff, serving without compensation as chairman of the $180 million out-of-court Agent Orange Payment Program Settlement Fund and in other capacities.

Being succinct and direct, I have found Jon Steinberg always to be just as direct, open, insightful. I think his affiliation with veterans and veterans' issues, his ability to craft the right kind of laws, his input has always worked to the interest of all veterans, not just Vietnam veterans.

I have been proud personally to associate myself with Steinberg and his colleagues over the years. I think his qualifications for a judgeship should be considered. I believe that he certainly, because

of his experience, temperament, and ability, is well qualified for a position on the Court of Veterans Appeals.

I'd be happy, Mr. Chairman, to answer any further questions. Thank you very much.

[The prepared statement of Mr. Hagel appears on p. 139.]

Chairman CRANSTON. Thank you very much.

Tom Harvey, welcome back.

TESTIMONY OF THOMAS E. HARVEY, FORMER DEPUTY ADMINISTRATOR OF VETERANS' AFFAIRS, VETERANS' ADMINISTRATION

Mr. HARVEY. Thank you very much, Mr. Chairman. It is, of course, a very special treat for me to come back and appear before this Committee again where I spent 2 years working as Chief Counsel and Staff Director from 1981 to 1983 when Jon was your Chief Counsel and Staff Director in the minority.

Working with Jon Steinberg has always been an exciting, interesting and very challenging experience. Jon is as bright and able a member of any congressional staff as I have ever had the opportunity to work with, and he is supported by a superb group of other folks on his staff—Ed Scott and Bill Brew—with whom he has worked for a long time. They do a terrific job representing you and representing the majority now of this Committee.

It was interesting and challenging during my days here—and I was very greatly supported by Senator Simpson then, and it was a support that came from knowing that both he and you shared the same commitment to providing the finest array of benefits to veterans, to making sure that the benefit structure and the organization that administered those—the Veterans' Administration—enjoyed the proper oversight, to making sure that we did as well by our veterans as we possibly could.

Jon and I—and I'm sure you and Senator Simpson—disagreed occasionally on specific issues, on specific approaches. I think that is wholly appropriate, and I always enjoyed the give and take working within the Committee staffs as we attempted to develop consensus positions.

Jon is a superb advocate, and he is a worthy adversary when it comes to doing something like that. A friend of mine read the testimony that I have submitted for the Committee, which I hope will be inserted in full in the record, and he said, "Reading between the lines, it looks like what you are saying is that he was a son of a bitch to work with." Senator, he was and he is and he can be. [Laughter.]

And I have told him that any number of times. I have said to him, "Jon, I could strangle you with my bare hands and I would get off scott free because of the way you are behaving in this." He is a tough negotiator. He will be a tremendous addition, I believe, to the Court of Veterans Appeals. And he will challenge the other judges on that Court to do their best to reach deep within themselves to provide the type of intellectual argument that Jon is capable and demanding of.

I did not mention Don Ivers in the text that I submitted, and I'd like to mention just a word, if I may, please, about Don, who is a

good friend who I think has done a superb job at the Veterans' Administration.

During my tenure as Deputy Administrator I very much valued his wise counsel on any number of different areas. He is a good advocate. In Don Ivers, Jon Steinberg will have met his match when they come to sit on the same panels together to hear these cases. Don, too, will be a superb addition to the Court of Veterans Appeals, and I am pleased to be here this morning and to have an opportunity to mention that with regard to him.

Thank you very much, sir.

[The prepared statement of Mr. Harvey appears on p. 139.]

Chairman CRANSTON. Thank you very much, Tom. All prepared statements will appear in the record. We appreciate your coming very much.

Don, welcome back to you, also.

TESTIMONY OF DR. DONALD L. CUSTIS, FORMER CHIEF MEDICAL DIRECTOR, VETERANS' ADMINISTRATION

Dr. CUSTIS. Thank you, Mr. Chairman. I, too, appreciate the opportunity to appear before your Committee and supply this testimony in support of Jonathan Steinberg's nomination to serve as an Associate Justice on the newly-established U.S. Court of Veterans Appeals.

I have known Jonathan and worked closely with him for over the past 10 years, starting with the time of my service as Chief Medical Director of the Veterans' Administration. I know him to be a brilliant, innovative, and scholarly counselor.

Jon is a sensitive, genuinely caring individual whose personal integrity is of the highest order. I can easily imagine the sincere, dedicated effort that he must have given to the Peace Corps early in his career.

Contrary to what was reported recently by a Washington Post columnist, Jonathan is, indeed, a friend and an advocate of the Department of Veterans Affairs, and he certainly is a friend of veterans. There are few who have ever accomplished more on behalf of veterans. He has an indepth understanding of veterans' benefits programs, having himself written much of its legislative authorization.

I, too, hold the unequivocal opinion that Jonathan Steinberg is not only superbly qualified for this appointment, but highly deserving of it.

I thank you, Mr. Chairman.

[The prepared statement of Dr. Custis appears on p. 140.]

Chairman CRANSTON. Thank you very, very much.

Finally, John, welcome back also to you.

TESTIMONY OF DR. JOHN A. GRONVALL, FORMER CHIEF MEDICAL DIRECTOR, DEPARTMENT OF VETERANS AFFAIRS

Dr. GRONVALL. Thank you very much, Mr. Chairman.

I detailed in my statement the working relationship and knowledge I have of Mr. Steinberg, which I can summarize briefly.

I should say parenthetically that I was only asked to supply comments about Mr. Steinberg, but I am happy to support strongly the

nomination of Mr. Ivers, with whom I have also had a close working relationship.

I have worked with Jon Steinberg for nearly 7 years in my position at the VA. He is one of the most remarkable people that I have ever had an association with in my life—and it has been a close and detailed relationship. I can therefore speak with absolute conviction, as I did in my written statement, when I say that on every instance of exchange with him it was clear to me that he was an advocate for veterans and an advocate for strengthening the VA programs that serve veterans; that he is an incessant worker, knowledgeable in detail about the law and the programs of the VA; that he operates by meticulous attention to detail; and that he is relentless in his followup whenever we in the Veterans' Administration made a projection that we would do this, that, or the other in regard to a veterans' program.

The most important comment I make about him in my statement is that, based on my experience, he is a man of absolute integrity. Because of Jon's forcefulness, his name is a household word in the VA, and I'm pleased to say that in the time that I have been at the VA and known Jon, even when I have talked with individuals who were deeply philosophically opposed to some position that Jon might have been taking, in every instance there has been uniform testimony to his integrity, his honesty, and the ability to deal straight on with him on the merits of the issue. That, unfortunately, is a statement that I cannot make about every individual that I have worked with in my life, including my life in Washington. But it is an absolutely true statement about Jon Steinberg.

My statement refers to tension that I have had with him over who should be responsible for the details of program operation, but the bottom line, again, of every interaction was that his goal was to improve the programs for veterans, expand programs for veterans, and enhance the quality of what the VA was doing. I enormously respect him for that and have enjoyed in an extraordinary way the dynamic tension that our relationship has had.

In summary, it appears to me, on the basis of considerable knowledge and working interaction with him, that he is eminently qualified for this position, that he is a true veterans' advocate, that he is extraordinarily knowledgeable and, above all, a man of absolute integrity. I would be pleased and proud to see him as a Federal judge. It would be a testimonial, I think, to the quality of the American governmental system.

Thank you.

[The prepared statement of Dr. Gronvall appears on p. 140.]

Chairman CRANSTON. Thank you very, very much, John.

I thank each and all of you. I have a few questions.

First of all, I have received a June 11 statement from Harry Walters, former Administrator of Veterans' Affairs, regarding Jon Steinberg's nomination. It will appear in the record in full. I'll read a few sentences.

"I found him to be honest, respectful, and professional. He has great vitality, a keen mind, and aggressive style. I would also characterize my contact with Mr. Steinberg to be nonconfrontational, cooperative, and with a sense of fairness for our veteran constituency.

"I believe that he is qualified to be a member of the Court. I commend him to you for your favorable consideration."

[The prepared statement of Mr. Walters appears on p. 141.]

Chairman CRANSTON. Now a few questions.

Max, would you please just very, very succinctly, describe your active duty service in the Armed Forces.

Mr. CLELAND. Mr. Chairman, I was commissioned in ROTC out of Stetson University in June 1964. I went on active duty October 18, 1965. I went through radio training at Fort Gordon, Fort Monmouth, and then to jump school at Benning, back to Fort Monmouth as an aide de camp to the Commanding General of the Army Signal Center and School. I then volunteered for Vietnam in the 1st Air Calvary Division in 1967. I was involved in the Tet offensive and the Siege of Khe Sanh. I was wounded April 8, 1968, and spent a year and a half in military and VA hospitals to end up before your Committee in December 1969, which is where I met Jon.

Chairman CRANSTON. Thank you very much.

Tom, would you do likewise?

Mr. HARVEY. Yes, sir, Mr. Chairman. I served for almost 5 years in the U.S. Army after law school. I served as an infantry officer. I spent 2½ years of that time in Vietnam, where I served as a company commander with the 173rd Airborne Brigade and as an advisor with the Vietnamese Airborne Division. I have the Silver Star, the Purple Heart, and about a dozen other decorations for my service in the Army.

Chairman CRANSTON. Thank you very much.

Don.

Dr. CUSTIS. I was originally commissioned in the U.S. Navy while in medical school. I finished medical school and internship in time to be on active duty for the last 2 years of World War II, during those 2 years on board ship in the South Pacific. Specifically, I participated in the Okinawa campaign.

Following World War II, in order to get my surgical training, I left the Navy, maintaining my Reserve status, however. I finished surgical training and reentered the Navy on active duty, spending a good many years after that as a surgeon in various Navy hospitals.

In 1969, during the Vietnam conflict, I spent that year as the Commanding Officer of the Combat Naval Hospital in Da Nang.

Upon return from Da Nang I had my first duty in Washington as Commanding Officer of the Bethesda Naval Hospital, which was followed by selection for flag rank and appointment as the Surgeon General.

I retired from the Navy in 1976, and made what proved to be a very happy decision to join the Veterans' Administration that same year.

Chairman CRANSTON. Thank you very much.

Chuck.

Mr. HAGEL. I volunteered for the draft in 1967 and entered basic training in April of 1967 as a private, as all did. I had orders in the fall of 1967 to go to Germany. I volunteered to go to Vietnam. I was held over for 2 months and got to Vietnam in December of 1967. I spent a year in Vietnam and got back to the United States in De-

cember 1968, with the rank of Sergeant E–5. I was wounded twice, with two Purple Hearts and other decorations and was separated from the Army in December 1968.

Chairman CRANSTON. Thank you very much.

I want now to ask just a few questions based on the substantial personal and professional relationship that each of you has had with Jon.

Max, would you place any credence in an allegation that Jon Steinberg had opposed any individual's Presidential nomination based on a supposed animosity toward Vietnam veterans?

Mr. CLELAND. No, sir.

Chairman CRANSTON. Chuck, would you place any credence in an allegation that Jon had opposed any individual's Presidential nomination based on animosity supposedly toward Vietnam veterans?

Mr. HAGEL. No.

Chairman CRANSTON. John, do you?

Dr. GRONVALL. No.

Chairman CRANSTON. Tom.

Mr. HARVEY. No, Mr. Chairman.

Chairman CRANSTON. Don.

Dr. CUSTIS. Absolutely no.

Chairman CRANSTON. Max, have you, in your dealings with Jon, ever witnessed any indication that he harbors a negative impression of or a negative attitude toward Vietnam veterans?

Mr. CLELAND. No, sir. Certainly not.

Chairman CRANSTON. Chuck, have you?

Mr. HAGEL. No.

Chairman CRANSTON. Don.

Dr. CUSTIS. Absolutely not.

Chairman CRANSTON. Tom.

Mr. HARVEY. No, Mr. Chairman.

Chairman CRANSTON. John.

Dr. GRONVALL. No, Mr. Chairman.

Chairman CRANSTON. Max, have you ever detected any basis whatsoever for suspecting that Jon held any ill will toward Vietnam veterans or any category of Vietnam veterans or believed Vietnam veterans were somehow incapable of exercising leadership or holding major positions in the Government?

Mr. CLELAND. No, sir.

Chairman CRANSTON. Tom.

Mr. HARVEY. No, Mr. Chairman.

Chairman CRANSTON. Don.

Dr. CUSTIS. No, Mr. Chairman.

Chairman CRANSTON. Chuck.

Mr. HAGEL. No.

Chairman CRANSTON. John.

Dr. GRONVALL. No, sir.

Chairman CRANSTON. Max, do you have any personal knowledge of pro-Viet Cong or anti-Vietnam war activities of Mr. Steinberg?

Mr. CLELAND. No.

Chairman CRANSTON. Chuck.

Mr. HAGEL. No.

Chairman CRANSTON. Tom.

Mr. HARVEY. No, Mr. Chairman.

Chairman CRANSTON. John.

Dr. GRONVALL. No, sir.

Chairman CRANSTON. Don.

Dr. CUSTIS. No.

Chairman CRANSTON. That completes the questions I have. Thank you very, very much for coming.

Our next panel consists of: Oliver Meadows, former Staff Director of the House Veterans' Affairs Committee; Cooper T. Holt, former Executive Director of the Veterans of Foreign Wars; Butch Joeckel, National Adjutant of the Disabled American Veterans; and Jack Powell, Executive Director of the Paralyzed Veterans of America.

I thank each of you very much for coming. This surely is a most august and impressive group of leaders in the veterans' community. It is good to see you. I now want to administer the oath. Would you please raise your right hands?

Do you swear or affirm that the testimony you will give to this Committee at this hearing today and any written answers or statements you provide to this Committee in connection with this hearing will be the truth, the whole truth, and nothing but the truth?

[All witnesses respond I do.]

Chairman CRANSTON. Oliver, I want to thank you for coming all the way from Texas to be here. That was very generous and helpful of you. Would you please lead off?

TESTIMONY OF OLIVER E. MEADOWS, FORMER STAFF DIRECTOR, VETERANS' AFFAIRS COMMITTEE, U.S. HOUSE OF REPRESENTATIVES

Mr. MEADOWS. It was a pleasure, Mr. Chairman, and I was glad to come.

I'd like to qualify myself as a witness by saying that I served as the House Staff Director, the Director of the House Veterans' Affairs Committee for 25 years, and 7 of those years were opposite Jon as Staff Director of one Subcommittee or the full Committee, various of those situations we had here in the Senate. After that I was National Commander of the Disabled American Veterans and have served on five congressional and national commissions that have to do with veterans. So I think I have had a pretty good opportunity to know Jon, work with Jon, and watch Jon.

It has already been said here—and it is absolutely true—he has had a big part in every major piece of legislation of any consequence that has come through the Congress in the last 20 years. I have spent a lot of time with him drafting these pieces of legislation, writing reports, holding legislative conferences, and all that sort of thing.

As regards his professional ability, I have written in my statement this sentence that I think characterizes Jon, "He is very intelligent, extremely thorough, very innovative, and one of the best and fastest legislative draftsmen I have ever seen. He does his homework. He comes prepared. I found him to be aggressive and a tough negotiator, but when the time came to compromise he knew how to do it."

So far as ethics go, I have never heard nor known the slightest suggestion of any sort of ethical impropriety on the part of Mr. Steinberg. In fact of business, he is rather straight laced. [Laughter.]

With regards to this business of Vietnam veterans, if I had to put my finger on one individual at the staff levels of these Committees and in the areas we are talking about here that has been pro-Vietnam veteran and has positioned himself and provided the leadership for our Vietnam veteran programs, it would be Jon Steinberg. He had a lot to do with tailoring the education program for their needs, he had to do with the Vet Centers, he had to do with the post-traumatic stress syndrome legislation, revising the housing program to their needs, and a lot of other things. If I had to name one man that is pro-Vietnam veteran as far as legislation goes, it would be Jon Steinberg.

I think he will be an excellent addition to this Court because he is going there with the knowledge that no other member of the Court will have as to veteran legislative background. But in that regard, let me say also that the other nominee here I think is an excellent addition, too, because he comes with a body of knowledge from the executive side, Mr. Ivers, that I think will do very well in serving the Court.

I have worked with Mr. Ivers for the last 4 years. He has been my counsel on several very controversial committees that I chair, and I know something about his ability, and I think he will be a great addition to the Court, too.

I am glad to see Mr. Steinberg in this position—hopefully about to be nominated to this Court. He is the right man for the job. Someone said here a minute ago—and I certainly do want to agree—if those other judges tend to be on the sleepy side, he'll wake them up.

Thank you very much.

[The prepared statement of Mr. Meadows appears on p. 142.]

Chairman CRANSTON. Thank you a great deal.

Cooper, thank you also very, very much for being available and coming here today.

TESTIMONY OF COOPER T. HOLT, FORMER EXECUTIVE DIRECTOR, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. HOLT. Thank you, Senator.

Mr. Chairman and members of the Committee, my name is Cooper T. Holt and, as you know, it was my distinct honor and privilege to have served for 26 years as the Executive Director of the VFW's Washington office. You will recall that on September 1 of last year I retired from that position; however, my retirement has in no way lessened my personal commitment to our Nation's veterans.

It is in this personal capacity and with a great deal of pleasure that I return to your Committee to testify in support of Jonathan Steinberg's nomination as an Associate Judge on the U.S. Court of Veterans Appeals.

As you know, the U.S. Court of Veterans Appeals will have exclusive jurisdiction to consider all factual, legal, and constitutional

questions and claims for benefits under laws administered by the Department of Veterans Affairs, and because of this I am extremely concerned that only individuals possessed of the highest degree of legal expertise, knowledge of veterans' laws and issues, and judgment tempered by human compassion should serve as administrative judges on this newly-created Court. To my mind—and I believe in the opinion of numerous others—Jonathan Steinberg is certainly such an individual. Otherwise, you can be sure I would not be here today.

Along with being the dean of chief counsels in the U.S. Senate, Jonathan has assumed the responsibility for the majority of the Veterans' Affairs Committee business since Chairman Alan Cranston became Whip in the 1970s. The extreme productivity in the effectiveness of this Committee bears witness, in my opinion, to the exemplary leadership, knowledge, and judgment of Jonathan Steinberg. He is now considered to be, without a doubt, the foremost expert on veterans' laws and issues, and he knows more about veterans' problems as they relate to the law under Government programs than any other person in the Congress—or, for that matter, the Nation.

Mr. Chairman, Jonathan Steinberg's contributions to improving the entitlements and benefits of veterans are far too numerous to mention here today. He has been a tireless worker in securing cost-of-living adjustments for service-connected disabled veterans and was instrumental in the comprehensive restructuring and modernization of the VA's vocational rehabilitation program to meet the special needs of disabled veterans.

Veterans' education, employment, and health and hospital care have also benefited from Jonathan's expertise and compassion. Through his efforts, legislation has been drafted and passed in the Senate that would liberalize the criteria for compensating those veterans suffering from exposure to ionizing radiation and Agent Orange.

Truly, Mr. Chairman, Jonathan's commitments to veterans cannot be challenged.

Finally, through having known this fine man for a good part of his almost 20 years of service in the U.S. Senate, I must say Jonathan's most qualifying virtue for judgeship on the Court of Veterans Appeals is his exquisite knowledge, appreciation, and, indeed, love of the law. I recommend Jonathan Steinberg fully and unequivocally for the position that he seeks.

[The prepared statement of Mr. Holt appears on p. 143.]

Chairman CRANSTON. Thank you very much, Cooper. Your testimony is particularly meaningful to me because I well remember some rather violent collisions that occurred between you and Jon and me in some of the earlier days of our work on our common front of trying to help the veterans.

Mr. HOLT. I don't even care to think about it. [Laughter.]

Chairman CRANSTON. Butch.

TESTIMONY OF CHARLES E. JOECKEL, JR., NATIONAL ADJUTANT, DISABLED AMERICAN VETERANS

Mr. JOECKEL. Thank you, Mr. Chairman. It is a pleasure to be back before the Committee.

I am pleased to appear here today on behalf of the DAV to lend our support to the President's nomination of Don Ivers and Jon Steinberg to be Associate Judges on the Court of Veterans Appeals.

I have worked with Don Ivers since he first came into the VA as General Counsel, and I can recall in 1985 when his name was being considered for General Counsel I went to see him. I had a cordial lunch with him and laid before him an issue that was a very difficult one for our organization. I recall at that lunch he said, "Well, I'll go back and I'll look at it and we will get together again." And we did. He called and he said, "As long as I am General Counsel, you are never going to win that issue."

I was a little disappointed, but since then I have come to know Don. He is straight, he is honest, and he tells it like it is.

Similarly, I have had the opportunity to work with Jon Steinberg for 15 years. In spite of the fact that people say that neither Jon nor I look like we possibly could have worked together 15 years, we have.

Jon is meticulously careful, as evidenced today. There are probably not many of us who have an original letter in our possession from our draft board with our number on it. [Laughter.]

And he is highly skilled and technical, as everyone has said. But Jon never, during the course of my dealings with him, ever leveled any personal attack in any way, shape, or form. He was always straightforward.

You know, much has been made about Vietnam and Vietnam veterans and his position, but I never found any legislation coming out of this Committee which in any way was restrictive to the benefits and services provided to Vietnam veterans.

And much has been made about news accounts. In fact, I heard one not too long ago that I think you'll remember, Senator. There is some fellow running around in the Senate by the name of Cranberg. Much of this news we listen to and we hear and we read is nothing more than rumor and innuendo, as has been brought out today with respect to Jon's draft status and service to his country.

Over these 15 years, you can't help making good friends. I consider both Don Ivers and Jon Steinberg friends, in spite of their obvious and dividing political views. But, nevertheless, that's the nature of veterans' affairs.

I am pleased to lend our support to their nominations.

Thank you.

[The prepared statement of Mr. Joeckel appears on p. 144.]

Chairman CRANSTON. Thank you very, very much for that testimony.

Jack.

TESTIMONY OF R. JACK POWELL, EXECUTIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. POWELL. Thank you, Senator.

I'd like to submit our written testimony for the record.

Chairman CRANSTON. It will go in the record.

Mr. POWELL. Thank you, sir.

It is a privilege to appear before you today to give our endorsement to the President's nomination of Jonathan R. Steinberg to be an Associate Judge on the U.S. Court of Veterans Appeals.

When I arrived in Washington, DC, as the Executive Director of PVA in 1979, 4 years after the official end of the Vietnam war, I was the youngest Executive Director of any of the veterans' organizations in this town. The overwhelming majority of my legislative staff was Vietnam veterans, as was the majority of the staff of PVA at that time.

At the risk of surprising the Chair, it has been rumored from time to time that I, myself, have a style that is occasionally aggressive and somewhat assertive. There are even those who would say that on occasion I have been argumentative. The Senator from Wyoming said I could quote him as one reference to that. [Laughter.]

I have had the opportunity to entertain a number of PVA convention delegates over the years. As Jonathan and I talked out issues of at those conventions, I never once detected the slightest indication, not one iota of an inkling, that Jonathan Steinberg had anything in his head but the best for America's veterans, regardless of the period of war that they came from.

That is not to indicate that Jonathan and I always saw eye to eye on things. When we did, I lauded and applauded his far-seeing wisdom and ability, and when we disagreed I defended his God-given right to be wrong. Fortunately, we agreed far more often than we disagreed.

Health care is one of the most important things to the Paralyzed Veterans of America. There is little doubt in my mind that there is no member of the staff of either of the committees who has done more in the 11 years that I have been in Washington, DC, to assure the quality of health care practiced in VA hospitals for the veterans of all wars—Vietnam back to World War I and even Spanish-American War veterans—than Jonathan Steinberg.

It is my personal privilege to endorse his nomination.

I thank the Chair.

[The prepared statement of Mr. Powell appears on p. 145.]

Chairman CRANSTON. Thank you very, very much for that heartfelt statement.

Oliver, may I turn to you? Would you briefly describe your active duty service in the Armed Forces?

Mr. MEADOWS. Mr. Chairman, I was a troop leader in the 114th Infantry of the 44th Infantry Division at the company grade level. I fought in France and was wounded up along the Rhine River and received a Purple Heart and the Bronze Star and Combat Infantryman's Badge, and some other things like that. I spent 2 years in military hospitals.

Chairman CRANSTON. Thank you very much.

Butch, would you please?

Mr. JOECKEL. I served in the Marine Corps from 1966 to 1968. I was wounded in the Tet offensive of 1968. I received the Silver Star, Purple Heart, Navy Commendation Medal, and retired as a corporal.

Chairman CRANSTON. Cooper.

Mr. HOLT. This will be very touching, sir. [Laughter.]

I came out of high school on Friday, and the following Monday morning I was on my way to Fort Riley, KS. I served from June of 1943 through October of 1944 overseas. My experience was in the South Pacific—mostly at Bougainville. I did leave the service, as I indicated, in 1944, and received the Combat Infantry Badge. I served with the 164th Infantry of the Americal Division. I earned the Infantry Badge, as I indicated, and also the Bronze Star.

And I want the record to show that I was discharged as a PFC by an act of Congress. That was the touching part I wanted to mention. The Congress passed a law, Senator Murkowski, whereby if a guy was in service 90 days they had to make him a PFC. So that's how I got that rating.

Senator MURKOWSKI. You mean the Secretary who came out as corporal did better than you?

Mr. HOLT. Apparently so, sir.

Chairman CRANSTON. Jack.

Mr. POWELL. Mr. Chairman, I enlisted in the military in October of 1965 after turning 18. After reaching the minimum age for commissioning, I was commissioned as second lieutenant in the U.S. Army. I served in the 82nd Airborne Division in Fort Bragg, attended Ranger School and Jump School, served with the 5th Special Forces group in Vietnam from 1967 to 1968 and B-36 Special Task Force as a TAC officer at Recondo School with A-334 in a detachment camp.

I was medevaced in late 1968 and assigned to the 2nd Armored Division at Fort Hood. I couldn't stand tankers, so I volunteered to go back to Vietnam. I got back to Vietnam with the 5th Special Forces Group in an operation called Special Operation Group, Command and Control South.

I was medevaced again in late 1970, and ultimately ended up spending some time in a VA hospital and retired from the military in 1971.

Chairman CRANSTON. Thank you very, very much.

If I may go back to you, Oliver, based on the long and close relationship you have had with Jon Steinberg to which you have testified, would you place any credence in an allegation that Jon Steinberg had opposed any individual's Presidential nomination based on Jon's supposed animosity toward Vietnam veterans?

Mr. MEADOWS. I think that suggestion borders on the preposterous, Mr. Chairman. I don't know anything at all. I have never seen anything that resembled the slightest suggestion of that sort of thing.

Chairman CRANSTON. Butch, same question.

Mr. JOECKEL. No.

Chairman CRANSTON. Cooper.

Mr. HOLT. No, sir.

Chairman CRANSTON. Jack.

Mr. POWELL. As aggressive and hostile as I can be, Mr. Chairman, Jonathan has always tolerated and put up with me and cooperated with me. I can't believe, if he could put up with me, that he'd have any problem with any other Vietnam veteran.

Mr. HOLT. I agree with that statement. [Laughter.]

Chairman CRANSTON. Oliver, in your dealings with Jon have you ever witnessed any indication that he harbors a negative impression or has a negative attitude toward Vietnam veterans?

Mr. MEADOWS. I think, as I indicated in my statement, Mr. Chairman, to the contrary. I name him as the most effective advocate the Vietnam veterans have had.

Chairman CRANSTON. Butch.

Mr. JOECKEL. I would agree with Oliver. To the contrary.

Chairman CRANSTON. Cooper.

Mr. HOLT. No, sir.

Chairman CRANSTON. Jack.

Mr. POWELL. Mr. Chairman, there are a few people, Vietnam veterans—some are alleged Vietnam veterans—who, the minute one opposes whatever it is they want, they are an anti-Vietnam veteran. I have been involved in veterans affairs for 20 years—11 of them here in Washington, DC. I like to think I have done a lot to support programs and benefits for Vietnam veterans. In fact, however, on the issue of judicial review, which is what this Court is all about, my original instructions from my organization were to oppose judicial review. Immediately I was branded by some Vietnam veterans as being an anti-Vietnam veteran.

When my board of directors changed their position and I supported judicial review, I suddenly was born again and now was a friend.

Chairman CRANSTON. Oliver, once again starting with you, have you ever had any reason to think that Jon believes that Vietnam veterans are somehow incapable of exercising leadership or holding major positions in the Government?

Mr. MEADOWS. No. That's ridiculous.

Chairman CRANSTON. Butch.

Mr. JOECKEL. No.

Mr. HOLT. No. Just the opposite.

Mr. POWELL. No, sir.

Chairman CRANSTON. Oliver, do you have any personal knowledge of any pro-Viet Cong or anti-Vietnam war activities by Jon?

Mr. MEADOWS. Not only do I have no personal knowledge, but I have never in all of my associations with him heard him concern himself with the political aspects of that conflict or take any great interest in the political side of the controversy of that. He took a much more judicious approach to everything than that.

Chairman CRANSTON. Thank you.

Butch.

Mr. JOECKEL. I know of nothing, Mr. Chairman.

Mr. HOLT. No, sir.

Mr. POWELL. No, sir.

Chairman CRANSTON. I thank you very much.

Senator Murkowski, any questions?

Senator MURKOWSKI. I have no questions, Mr. Chairman.

Chairman CRANSTON. Thank you.

I thank the members of the panel very much.

We will now proceed to William Josephson, former General Counsel of the Peace Corps.

Please remain standing and raise your right hand.

Do you swear or affirm that the testimony you will give to this Committee at this hearing today and any written answers or statements you provide to this Committee in connection with this hearing will be the truth, the whole truth, and nothing but the truth?

Mr. JOSEPHSON. I do.

Chairman CRANSTON. I thank you very much for coming. I'm going to have to leave for about 1 minute.

Senator MURKOWSKI [presiding]. Please proceed, Mr. Josephson.

TESTIMONY OF WILLIAM JOSEPHSON, FORMER GENERAL COUNSEL, PEACE CORPS

Mr. JOSEPHSON. Do you have my statement?

Senator MURKOWSKI. Your statement will be entered into the record as if read.

Mr. JOSEPHSON. As I indicate in my statement, I was the General Counsel of the Peace Corps when Jon Steinberg came to work in the Peace Corps General Counsel's Office as an attorney-advisor in 1964. We worked closely together from 1964 until I resigned as General Counsel of Peace Corps in June of 1966 and returned to law practice in New York. During that time, I found Jon to be one of the most intelligent, careful, meticulous, indefatigable professionals that I had every worked with.

Sitting here today listening to the testimony that I have heard about his work for the Senate since he left the Peace Corps makes me feel extremely proud to have had the opportunity to work with Jon at the beginning of his professional life in the law.

I find myself extraordinarily moved by the obviously heartfelt, well-informed, and varied testimonials in support of his professional life as as a Senate staff person, and it makes me extremely proud to have had an association with him in the early part of his legal career.

[The prepared statement of Mr. Josephson appears on p. 146.]

Chairman CRANSTON. I thank you for that testimony, which I didn't hear all of but I know from your knowledge of Jon what the thrust of it would be. I will look at it in the record.

I'd like to ask you just a few questions.

Would you explain the principles under which Tom Pauken's role as Director of the ACTION agency conflicted with the policies of the Peace Corps designed to avoid the appearance of a connection between the Peace Corps and intelligence agencies and activities?

Mr. JOSEPHSON. I would be glad to do that, Mr. Chairman.

One of the first decisions that the Peace Corps' staff made in 1961 was to ensure a divorce between the Peace Corps and any intelligence activities of the United States. In that connection, an agreement was negotiated between the Peace Corps and the intelligence community. My memory tells me that Mr. McCone was then the Director of Central Intelligence, but I am not entirely certain about that. It might still have been Mr. Dulles. But I do have a very clear memory of working with Sargent Shriver, with the then Director of Central Intelligence, with Mr. Helms, who was, I believe, then the Director of Operations in Central Intelligence, and with his Special Assistant Bob Kiley, who is now the Chair of the

Metropolitan Transportation Authority in New York, on the terms of this absolute separation between any Peace Corps staff and any Peace Corps volunteer and any intelligence-gathering activities of the United States.

That agreement developed over time into a formal set of policies adopted by the Peace Corps with respect to the service in it of anyone who had any association with the intelligence activities of the United States and, similarly, the adoption by the intelligence agencies of formal policies with respect to their use—their employment or use—of any former Peace Corps or present Peace Corps persons in any of their activities.

Chairman CRANSTON. Thank you a great deal. That clarifies a point that I think needed clarification.

I submit for the record the April 9, 1981, letter from then Peace Corps General Counsel Robert M. McNamara, Jr., to me, which expressed his opinion that, "Mr. Pauken would be barred from serving in a position as a Peace Corps staff member in any overseas position, in any Peace Corps Washington/policy position, in any country desk officer position, and any position which would likely require him to travel overseas as part of his official responsibilities." That is, of course, consistent with the policy you have just outlined.

[The letter from Mr. McNamara appears on p. 152.]

Chairman CRANSTON. Bill, you have had a long, close professional and personal relationship with Jon Steinberg. You were close associates during the time of rising U.S. involvement in the Vietnam war and rising controversy over our country's role in that war. Do you have any personal knowledge that Jon Steinberg ever engaged in any pro-Viet Cong or anti-Vietnam war activities?

Mr. JOSEPHSON. I have none, Mr. Chairman, and I think that had he, during the time I was General Counsel, I would have known of it or it would have come to my attention.

Chairman CRANSTON. You never heard of any such thing?

Mr. JOSEPHSON. No. None whatsoever.

Chairman CRANSTON. What do you think of such allegations?

Mr. JOSEPHSON. Baseless, in my knowledge. And I think Jon's description this morning of the way Peace Corps staff and volunteers, in general, governed themselves and were expected to govern themselves is accurate. Dean Rusk said, as I know many members of the Senate know, at the first Peace Corps National Advisory Council meeting, that the Peace Corps should not become an instrument of foreign policy, because to make it such would be to rob it of its contribution to foreign policy. That is a touchstone that I think every Peace Corps person has followed since that time, and it is such a cornerstone of Peace Corps life and operations that it is inconceivable to me that someone as meticulous and professional as Jon—and certainly there has been abundant testimony this morning to those qualities in him—would ever overstep the boundary that Secretary Rusk drew so eloquently that day.

I also know—not of my own knowledge as General Counsel, but as a newspaper reader—that during the height of the Vietnam conflict certain volunteers serving overseas did express views on these issues, and I know—again, from general knowledge—that they were disciplined. I even know of a couple that were removed from

Ecuador for that behavior because they happen to be personal friends of mine now, although the male member of that family has recently died. So there is no question in my mind about the strength and brightness of this line in Peace Corps policy.

Chairman CRANSTON. At any time have you ever heard Jon express any animosity or antipathy toward members of the U.S. Armed Forces who fought in Vietnam?

Mr. JOSEPHSON. None whatsoever.

Chairman CRANSTON. Do you place any credence in the allegation that comes from only one source, as far as I know, that Jon Steinberg opposed any individual's Presidential nomination based on Jon's supposed animosity toward Vietnam veterans?

Mr. JOSEPHSON. I would not.

Chairman CRANSTON. Have you ever witnessed any indication that he harbors a negative impression of or a negative attitude of any sort toward Vietnam veterans?

Mr. JOSEPHSON. No, sir.

Chairman CRANSTON. Have you ever detected any basis whatsoever for suspecting that he believes that Vietnam veterans are somehow incapable of exercising leadership or holding positions in the Government?

Mr. JOSEPHSON. I'd find it inconceivable.

Chairman CRANSTON. Thank you very much.

Mr. JOSEPHSON. Could I add for the record, Mr. Chairman, that if Mr. Pauken is the source of some or all of these accusations, I find that extraordinary. The incident about his nomination arose 9 years ago. We have had abundant testimony today to the importance of the understanding in Washington of political give and take and compromise. The objections that were made to Mr. Pauken's service as Director of ACTION if he would have responsibility for the Peace Corps were entirely principled objections. Bob McNamara's letter, which you alluded to earlier, lays an ample basis for those principles.

It was the judgment of the Senate at that time that, while Mr. Pauken, whom I do not know, was qualified to serve as Director of ACTION—and I believe he was confirmed as such and served as such—it was also the judgment, not only of the Senate, but of the House and of President Reagan—that the Peace Corps should be separated from ACTION, in part because of the relationship between ACTION Director and the Peace Corps and the ACTION Director's admitted heavy involvement in intelligence activities while serving in the military, and also because I believe many Senators and Congressmen—and ultimately the President—felt the Peace Corps should be independent again.

I should hope that Mr. Pauken could accept the principle judgment of our political leadership on these issues and not assume that this represents any kind of personal vendetta against him by anybody.

Chairman CRANSTON. Thank you very much. That is a very helpful statement. It is, indeed, a fact that he is the prime source of these totally unfounded allegations.

Do you have any questions?

Senator MURKOWSKI. No, Mr. Chairman.

Chairman CRANSTON. Thank you very much.

Mr. JOSEPHSON. Thank you very much, Mr. Chairman.

Chairman CRANSTON. We will now hear from Sidney Cooper, National Legislative Director of Veterans Due Process, Inc.

Do you swear or affirm that the testimony you will give to this Committee at this hearing today and any written answers or statements you provide to this Committee in connection with this hearing will be the truth, the whole truth, and nothing but the truth?

Mr. COOPER. Yes, sir.

TESTIMONY OF SIDNEY COOPER, NATIONAL LEGISLATIVE DIRECTOR, VETERANS DUE PROCESS, INC.

Mr. COOPER. Thank you very, very much.

I have submitted to the Committee my full statement. I doubt if I will be able to present it all.

Chairman CRANSTON. We do have a 5-minute rule. The whole statement will go in the record.

Mr. COOPER. Thank you. I'll do the 5-minute statement. I've got them 5 minutes, 7 minutes, 10 minutes—any length you would care.

Chairman CRANSTON. We'll go for 5 minutes.

Mr. COOPER. OK.

The interest of veterans compels Veterans Due Process to oppose Mr. Ivers confirmation with every fiber of our being. However, we do so without rancor or ill will.

Our position is based solely on Mr. Ivers' own testimony before the Congress, which we submit is at substantial variance with the facts and which have been harmful to veterans.

For over half a century, the Congress has permitted VA distortions of the facts to go unchallenged, such as those now attributed to Mr. Ivers, which have resulted in flagrant misrepresentations to the Congress, and even to the U.S. Supreme Court in *Johnson* v. *Robinson*.

The factual basis for our opposition to Mr. Ivers' confirmation to the Court of Veterans Appeals is as follows: Mr. Ivers either doesn't believe in due process or he simply doesn't know what it means, as defined in *Goldberg* v. *Kelley*. *Goldberg* v. *Kelley* characterized the attributes of due process as encompassing the cross-examination of adverse witnesses, the disclosure of opposing evidence to the claimant, the right to retain an attorney, a determination based upon the record of the hearing, a statement of the reasons for the determination, and the evidence relied upon, and an impartial decision-maker.

Mr. Ivers doesn't believe in supplying veterans with the necessary evidence in order to establish their entitlement or believe in thorough physical examinations by independent medical experts, or believe in subpoena power to compel testimony and permit cross examination thereof so that a full documentary record can be developed. And why? Because it is too time consuming.

Judicial review is precluded under 80 Federal Statutes, so that Mr. Ivers contends that there is nothing unique or unfair about an exclusively administrative process for rendering VA benefit decisions. He refers particularly to the Federal Employees Compensa-

tion Act, which prevented 156,000 employees from seeking judicial review of disability compensation determinations.

Consequently, we ask: do Government employees have the right to counsel at the inception of their hearing? Do they? Or the right to subpoena witnesses or evidence, or to cross-examine, or a determination based upon the record of the hearing, or a decision clearly spelling out the rationale or the evidence relied upon, or an independent decisionmaker who is not held hostage to the Office of Management and Budget? You bet they do.

So what is unique about the VA's plague-infested adjudication system? Everything!

Moreover, in an examination of at least 70 of the 80 Federal Statutes—all we could find—indicated that virtually all had no relevance or were the least bit comparable to the veterans' situation. But still the VA and Mr. Ivers' charade goes on.

Mr. Ivers has been bragging to Congress about how uniformly veterans' claims are being treated, while BVA Chairman Eaton, usually sitting next to him, has been telling Congress just the opposite.

Mr. Eaton submits that his Board of Veterans Appeals can't get uniform or equal treatment of veterans' claims in the same building, on the same floor, or even in the same room.

Moreover, the VA, itself, conducted a study of regional office treatment of identical veterans' claims in order to ascertain the degree of uniformity achieved. The results were appalling, and no similar study was conducted thereafter.

Accordingly, what does Mr. Ivers mean when he talks about uniformity?

Veterans of Mississippi are twice as likely to get benefits as veterans residing in other States. Moreover, their claim payments are 30 percent higher than the national average. Despite being last in providing servicemen to the Nation, the veterans of Mississippi are first in the hearts of the VA.

The famous Gail Gompf blackmail letter of June 5, 1986, clearly demonstrated that NVSO represented veterans, had informal access to VA adjudicators, whereas those self or pro bono represented veterans were not accorded the same privilege.

Mr. Ivers, as General Counsel, took no notice, and, to our knowledge, did absolutely nothing.

I've got about another 2 minutes. May I finish?

Chairman CRANSTON. You can have about 2 more minutes. Try to wrap it up.

Mr. COOPER. OK, because I'm the only one testifying against anybody here. I'm beginning to feel like Custer at Little Big Horn.

Mr. Ivers testified that only the VA can make the technical or complex medical decisions involved in veterans' claims, but he doesn't dare tell the Congress that many VA medical decisions are rendered by adjudicators who haven't even read the claims under the BVA practice of courtesy signatures, or that regional office doctors are rendering medical opinions at supersonic speed levels—at the rate of one or more per minute. The VA can't afford to have their decisions reviewed by independent medical experts because veterans would win one-third, or 77 percent more often, depending upon which set of numbers we use.

Obviously, you can't have veterans winning too often; otherwise, it would break the VA's plague-infested budget.

Yet, Mr. Ivers says that only the VA can perform this function, and no one questions him. Why?

Mr. Ivers calls veterans' compensation gratuities. Would the Senate characterize compensation relating to the loss of an arm or a leg in combat as being a gratuity?

Similarly, would the Senate consider workman's compensation a gratuity if an arm or a leg were lost while working in a steel mill?

In fact, in all of title 38 law, you will not find a single reference to gratuities—none, at least, that we could.

Chairman CRANSTON. Mr. Cooper, I'm sorry to say that your time has expired. Your entire statement will go in the record. We thank you for coming.

[The prepared statement of Mr. Cooper appears on p. 147.]

Mr. COOPER. Do you have any questions for me?

Chairman CRANSTON. I do not have any questions. Do you, Frank?

Senator MURKOWSKI. I have no questions.

Chairman CRANSTON. No, we do not.

Mr. COOPER. That is amazing, because I believe I have put a lot on the record. Do you want to hear about my Army record?

Chairman CRANSTON. No. Others were asked for a different reason. Thank you very much.

Frank, you indicated you had——

Senator MURKOWSKI. Do you have any further witnesses?

Chairman CRANSTON. No.

Senator MURKOWSKI. Mr. Chairman, I'm not going to recall either of our two nominees at this time. I have really concluded my questions of Mr. Ivers. I have, however, several questions for Jon Steinberg which, in view of the fact that it is 1:15 Friday afternoon and the Senate is no longer in session, obviously we look for other alternatives. Another alternative is one that was often used, and that is the request that you submit for the record the response to specific questions.

Mr. Chairman, I did not finish that portion covering the efforts to, for the record, generate information relative to the time that Mr. Steinberg was of draft age, so I would ask that he submit for the record the following:

To the best of his knowledge——

Chairman CRANSTON. Before you go to the record, we might just ask—I'm perfectly prepared to stay here to try to complete all of this now, rather than——

Senator MURKOWSKI. Well, I think we have already had a request from Senator DeConcini to provide information to the record to Mr. Williams, and I think this information probably would require a little reflection. So let me proceed.

Chairman CRANSTON. I understand that Mr. Williams can provide those answers on Monday.

Senator MURKOWSKI. I have no particular timeframe, Mr. Chairman. I have questions that can be responded to Monday or Tuesday or whatever, because they are relatively simple, but I think have some relevance to the line of questioning in the record, which I think is appropriate.

You, in your remarks, Mr. Steinberg, indicated that you registered with the local draft board after your 18th birthday, which is, of course, appropriate. My first question is: after registering, did you at any time seek to enter the U.S. Armed Forces voluntarily.

The second question is: did your draft board assign you a particular draft classification statement or deferment when you initially registered in 1957?

And the third question: to the best of your ability—and I recognize it is unusual, and I commend you for being able to come up with the records personally relative to the letter which you submitted, but if you have any records as to your draft status changing from the period of 1958, 1959, 1960, 1961, 1962, and 1963.

Last, did you every apply for a particular classification status or deferment which was denied?

And were you ever informed by competent authority draft board or otherwise that you were rejected for military service, medical or any other reason?

This is not a question, but it is a presumption. We assume that you were simply not drafted because the draft board never drafted you. So if you want to comment on that, that would be appropriate.

The last point I have, Mr. Chairman—I'll give you the question, Mr. Chairman, because they were paraphrased.

Chairman CRANSTON. I would like to call Jon back and hear his answers to this.

Senator MURKOWSKI. That's fine.

Chairman CRANSTON. Jon, would you come to the table? Mr. Ivers, also, I have one question I want to put to you.

Mr. STEINBERG. I can try to do it from recollection, or would Senator Murkowski like to repeat the questions?

Senator MURKOWSKI. I will repeat the questions, of course.

After registering after your 18th birthday, did you at any time seek to enter the U.S. Armed Forces voluntarily?

Mr. STEINBERG. No, sir.

Senator MURKOWSKI. Did your draft board assign you a particular draft classification status or deferment when you registered in 1957?

Mr. STEINBERG. As I indicated previously, Senator——

Senator MURKOWSKI. I have your letter here.

Mr. STEINBERG. I was referring to my oral testimony.

Senator MURKOWSKI. OK.

Mr. STEINBERG. My recollection is that at the time I registered I was granted what I believe is a 2–S student deferment since I was at that time a freshman at Cornell University. My recollection is that that status continued through my graduation from Cornell in May or June of 1960, and then continued through my 3 years of law school at the University of Pennsylvania until I graduated from that institution in June of 1963.

Then, according to the best reconstruction that I can provide based on the October 6, 1964, letter that I provided to the Committee, I received a 2–A classification during my clerkship with Judge Burger for the next year.

And then, in October of 1964, upon sending the records which I have provided to the Committee, to my local board, my recollection is that I received the 3–A deferment. The Selective Service record

indicates that I received the 3-A status in November 1964. That is as much information as I have on my selective service status.

Senator MURKOWSKI. I think there is evidence here to substantiate that, Jon. The timeframe that is probably particularly of interest, if it can be reconstructed, would be that period prior to your receiving the 2-A, which was about September of 1964, or thereabouts. The records seem to indicate that you went from 2-A to 3-A, which is the only record that the Records Branch or the Selective Service has been able to provide the Committee.

Mr. STEINBERG. Senator, if I might interject one more moment, upon my graduation from law school I attended a bar review course in Philadelphia, PA, for approximately 6 or 7 weeks, and I was still a student during that period of time. I had been hired by Judge Burger, my recollection is, in March or April of that year. I took the bar review course at the end of July or the middle of July, perhaps—I can't remember exactly—and reported for service as a law clerk at the end of August or the beginning of September. So there was a period of some 6 weeks or so when I finished taking the bar and prior to my reporting for the clerkship when my wife and I took a belated honeymoon and traveled to Europe.

Senator MURKOWSKI. Well, of course, this line of questioning would have no merit if we had the readily-available records, but we don't.

The next question, Mr. Steinberg, is: did you ever apply for a particular classification status or deferment during this time, to your recollection, other than obviously what you recall—you had a student deferment?

Mr. STEINBERG. The letters that I submitted to the Committee suggest that I was applying on October 6 of 1964 for reclassification based upon the birth of my son. The letter doesn't actually say that, but that is what its import seems to be, and I believe that is how the draft board treated it.

Senator MURKOWSKI. The record appears to indicate that that was granted into a 3-A at some time thereafter.

Mr. STEINBERG. The record indicates that. I have attempted to reconstruct the record from Judge Burger's personnel files, but I was advised that they don't exist as to what communication might have occurred between him and my draft board in connection with my clerkship. So, I am unable to do that.

Senator MURKOWSKI. Were you ever informed by any competent authority that you were unfit for military service for any reason—medical, physical, otherwise?

Mr. STEINBERG. With respect to the draft, the answer to that is no. I was never called for a medical examination. However, I was able to obtain my college transcript. At the time that I was a student at Cornell, Cornell, as a land grant college, as I understand it now based upon trying to reconstruct this, required all of its students to enroll in what was then called Military Science or ROTC for the first 2 years. I did not take the Military Science course. My transcript shows an entry October 12, 1956—which was my freshman year—"permanently excused from MS (medical)." And I have a note here from the registrar of the College of Arts and Sciences of Cornell University dated June 13—this Wednesday—of 1990, stating "There is a notation on the second page of the document

that is dated 10/12/56. In this notation there is an abbreviation of MS, which stands for Military Science." So that refreshes my recollection, which was somewhat hazy as to why I did not engage in the Military Science curriculum during my first 2 years at Cornell, and that is that I was medically disqualified from doing so.

But I was never called for a physical before my draft board.

Senator MURKOWSKI. That medical disqualification was strictly for the ROTC at Cornell? It had nothing to do with any medical——

Mr. STEINBERG. That's correct.

Senator MURKOWSKI [continuing]. Rejection based on Selective Service?

Mr. STEINBERG. Right. I was never given a physical examination.

Senator MURKOWSKI. Would you say, then, the obvious conclusion that the reason you didn't go into the military service when your general age group cohorts were subjected within the age parameters of the draft that simply you were never drafted?

Mr. STEINBERG. I don't understand the latter part of that question. I certainly was never drafted, but I——

Senator MURKOWSKI. OK. Well, that's the answer then.

Mr. STEINBERG. I don't know what you mean by my age cohorts were——

Senator MURKOWSKI. Well, you were in an age group exposed to the draft.

Mr. STEINBERG. That's correct.

Senator MURKOWSKI. And the answer that you are giving the Committee is that you were never drafted.

Mr. STEINBERG. That's correct.

Senator MURKOWSKI. That's a pretty good answer.

Mr. Chairman, I know of your tenderness, if you will, on the type of questioning which I have pursued with this witness, because I know this witness is very close to you. For that I, too, feel somewhat uncomfortable. However, you have presented an excellent and an outstanding and an appropriate witness group supporting the nominee—both nominees, for that matter. I feel that, as my association with both gentlemen—Mr. Steinberg more so, since we have worked together from time to time—has put me in the rather difficult position of feeling an obligation to pursue rumors, allegations, some of which perhaps were inappropriate, others which I think are appropriate. I think it is fair to say that there has been no evidence presented to me at this hearing to suggest that either of the candidates, Mr. Steinberg or Mr. Ivers, would be unsuitable for the position of Associate Judge for the U.S. Court of Veterans Appeals. So I commend you for the presentation—certainly the outstanding witnesses which have all been supportive of the nominees.

I wish to advise you, Mr. Chairman, that the FBI is still pursuing the circumstances surrounding the disappearance of the selective service records of those born in 1939. I anticipate a response to that inquiry, of course, which will be shared with all members of this Committee. I don't know that there is anything relevant there for the record but, nevertheless, that process has been requested and the FBI has advised me that they are pursuing that matter.

I have nothing further to add at this hearing, and, without question, will be supporting the two nominees.

Chairman CRANSTON. Thank you very much. I appreciate that statement very much.

I wanted to clarify the record regarding the assurances that each of you gave earlier as to future contacts with the Senate and this Committee. Does that apply just to matters before the Court? Mr. Ivers?

Mr. IVERS. I believe it would apply primarily to matters before the Court. I don't think that becoming a judge seals you off from your past associations and friendships.

Chairman CRANSTON. Senator Murkowski stated that was the intention.

Jon, you would——

Mr. STEINBERG. That was my intention in answering and in concurring in the answer that Mr. Ivers gave at that time.

Chairman CRANSTON. I thank all who have participated very much.

We will have a Committee session off the Floor to vote on the two nominations—this is a practice we have followed in the past to expedite actions—immediately following the first roll call vote after 2 p.m. next Tuesday, including the Mankin and Holdaway nominations, as well as Mr. Ivers and Mr. Steinberg.

I thank all concerned. I thank the witnesses, I thank the nominees, and I thank the Senators.

[Whereupon, at 1:34 p.m., the Committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
CHIEF JUSTICE BURGER
RETIRED

June 11, 1990

Dear Senators Thurmond, Simpson and Specter:

I have your letter of June 4 asking about Jonathan Steinberg who served as one of my law clerks before his service at the Senate.

In common with all judges I selected my law clerks carefully and Jonathan Steinberg was no exception. He served with me for one year exhibiting an excellent basic legal training, sound analytical methods and judicial temperament. He passed up opportunities for private practice because of a strong dedication to public affairs and public service.

I would consider him very well qualified to serve on the Court of Veteran's Appeals.

Cordially,

Warren E. Burger

Hon. Strom Thurmond,
Hon. Alan K. Simpson, &
Hon. Arlen Specter
United States Senate
Washington, D.C. 20510

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Mr. Chairman, I deeply regret that a family commitment made it impossible for me to attend the hearing of our Committee to consider the nomination of Jonathan R. Steinberg for the distinguished position of Associate Judge on the U.S. Court of Veterans Appeals.

I wish to express my strong support for the nominee, Jon Steinberg. As you know, I had the fortune to obtain a seat on the Senate Veterans' Affairs Committee when I joined the Senate in 1985. Thus, I have worked closely with Jon Steinberg for more 5 years. From the very first day, I have been impressed with Jon's intellect, integrity, and superb professionalism.

The country is blessed to have a public servant as dedicated and capable as Jon Steinberg. The President's decision to nominate Jon for the U.S. Court of Veterans Appeals is an especially enlightened one. As a member of the court, Jon will be able to draw upon a vast reservoir of knowledge about the relevant laws and legislative history pertinent to that court. And we can count on Jon to perform this role with the integrity, honesty, and fairness that he has demonstrated throughout his career.

Mr. Chairman, I know we share the hope that this new court, the U.S. Court of Veterans Appeals, will serve as a judicial body that will guarantee justice and fairness in the application of laws affecting America's veterans. The addition of Jon Steinberg to this court will make a major contribution in fulfilling this crucial objective. The veterans of this country, their families, and all Americans are fortunate that such an addition is close at hand. Again, I express my enthusiasm for Jon Steinberg's nomination, and I warmly wish him the very best.

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Mr. Chairman, thank you for holding this hearing today to consider the nomination of two individuals to serve as Associate Judges on the new U.S. Court of Veterans Appeals, and for this opportunity to testify.

It is my great honor to introduce to you Mr. Donald L. Ivers, a man who is eminently qualified to sit as an Associate Judge on the U.S. Court of Veterans Appeals.

II urge the Committee to confirm his nomination as soon as possible.

The U.S. Court of Veterans Appeals became a reality in October 1989 when the Senate confirmed the Chief judge and two Associate Judges. This action ended more than a decade of congressional debate over establishment of a new Federal court with jurisdiction exclusively to review final decisions of the Board of Veterans Appeals. By April 30 of this year, more than 500 cases had been placed on the docket of the new court.

It is, therefore, important that the Senate act quickly to bring the court up to its full complement of seven judges.

America's veterans deserve a court of appeals that is staffed with judges who have the keen intellect, experience, and compassion necessary to understand fully all aspects of the cases over which they preside.

Donald Ivers is such a man.

An Associate Judge on this court must appreciate veterans' issues from both the perspective of the Veterans' Administration and the veterans he serves.

Donald Ivers has done both.

Donald Ivers is a veteran, having served as an enlisted man and a commissioned officer. A decorated war [illegible], he served 5 years on active duty in the U.S. Army, including a tour of duty in Vietnam. He continues to serve this country as a lieutenant colonel in the U.S. Army Reserve. With these experiences, Donald Ivers knows and understands the situation of the American veteran.

Since his military service, Donald Ivers has built a distinguished career in private practice of the law and as a legal counsel in Federal Government.

He served as Counselor to the Secretary of Transportation, as Chairman of the DOT Secretary's Safety Review Task Force, and a Chief Counsel to the Federal Highway Administration.

Since 1985, he has served as General Counsel of the Veterans' Administration, where he directed a legal staff of 320 lawyers. In that capacity, Mr. Ivers played a vital role in shaping the policies directly affecting American veterans today.

With this distinguished background, Donald Ivers will bring to the U.S. Court of Veterans Appeals an objectivity and understanding developed through close involvement with the issues confronting American veterans.

And I must add, Mr. Chairman, that Mr. Ivers also showed great wisdom by obtaining much of his education in New Mexico, graduating from the New Mexico Military Institute and the University of New Mexico.

So it is with great pride, Mr. Chairman, that I introduce Donald L. Ivers, a most capable nominee to sit as an Associate Judge on the U.S. Court of Veterans Appeals, and urge the Committee confirmation of his nomination.

Thank you.

PREPARED STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE STATE OF VIRGINIA

Mr. Chairman, it is a pleasure to come before you today to introduce and recommend the confirmation of a valued constituent, Donald L. Ivers, to serve as the Associate Judge to the Court of Veterans Appeals.

Don Ivers has a distinguished record of military service to our country. Mr. Ivers divided his 5 years of active Army service first as an enlisted man and then as an officer with assignments in the United States, Germany and Vietnam. After his active duty service, Don Ivers continued to serve in the Army Reserves, where presently he is a lieutenant colonel. Throughout his service Don has received many decorations including the Bronze Star, the Air Medal, the Army Commendation Medal, and the Joint Services Achievement Medal.

Don Ivers has also served the Government with the Department of Transportation. First in 1981 as Counselor to the Secretary of Transportation, then as Chairman of the Secretary's Safety Review Task Force, and later a Chief Counsel of the Federal Highway Administration. In 1985 Don Ivers was appointed General Counsel to the then Veterans' Administration.

His broad experience, in both the military and the Government, will prove valuable to the Court of Veterans Appeals. In addition to this experience, Don Ivers has an impressive legal background. He graduated from American University Law School in Washington, DC, and the pursued graduate studies at Georgetown University. From 1972 to 1978 Don Ivers practiced law with the Washington, DC firm of Brault, Graham, Scott, and Brault. Since beginning his work in 1985 as General Counsel of the Veterans' Administration, Don Ivers has directed a legal staff of 650 and has provided legal advice and services to the nationwide Veterans Affairs staff.

I believe Don Ivers has the experience necessary to effectively serve as Associate Judge to the Court of Veterans Appeals.

Thank you for affording me the chance to come before you to endorse the confirmation of a competent individual, Donald L. Ivers, for Associate Judge to the Court of Veterans Appeals, and to encourage his confirmation.

QUESTIONNAIRE FOR PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Name: IVERS (LAST) Donald (FIRST) L. (OTHER)

2. Present address: 2000 Huntington Avenue #511, Alexandria, Virginia 22303 (CITY) (STATE) (ZIP CODE)

3. Position to which nominated: Associate Judge, U.S. Court of Veterans Appeals

4. Date of nomination: January 31, 1990

5. Date of birth: 6 May 1941 (DAY) (MONTH) (YEAR)

6. Place of birth: San Diego, California

7. Marital status: Divorced

8. Full name of spouse:

9. Names and ages of children:

Alisa Mlyn (Ami)	Age 18
Stuart Kevin	Age 13

10. Education:

Institution (including city and State)	Dates attended	Degrees received	Dates of degrees
Public Schools Roswell, New Mexico	Grades 1-4	None	
Public Schools Artesia, New Mexico	Grades 5-12	High School Diploma	
New Mexico Military Institute Roswell, New Mexico	9/59-5/61	AA	1961
University of New Mexico Albuquerque, New Mexico	9/61-6/63	BA	1963
Washington College of Law American University, Washington, D.C.	9/68-7/71	JD	1971
Georgetown Law School Georgetown University, Washington, D.C.		None	

11. Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Military: Bronze Star Medal, Air Medal, Army Commendation Medal, Joint Services Achievement Medal, Graduate: U.S. Army Command & General Staff Course.

American University: Outstanding Student - Litigation Seminar; Student Delegate - ABA Convention - St. Louis, Missouri.
U.S. Department of Transportation: Meritorious Service Award.

Veterans Administration: Special Contribution Award.

12. Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable, and other organizations for the last 5 years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
ATTACHED		

13. Employment record: List below all employment (except military service) since your twenty-first birthday, including the title or description of job, name of employer, location of work, and inclusive dates of employment.

ATTACHED

14. Military service: List below all military service (including reserve components and National Guard or Air National Guard), with inclusive dates of service, rank, permanent duty stations and units of assignment, titles, descriptions of assignments, and type of discharge.

ATTACHED

12. Memberships

Organization	Office Held (if any)	Dates
District of Columbia Bar	None	1972-Present
Bar Association of the District of Columbia	None	1972-1978 1988-Present
American Academy of Hospital Attorneys	None	1988-1989
New Mexico State Society	None	1988-Present
Reserve Officers Association	None	1987-Present
The Republican National Lawyers Association	None	1987-Present
American Legion	None	1985-Present
Veterans of Foreign Wars	None	1985-Present
Reserve Network	None	1985-Present
The Conservative Network	None	1985-Present
Sovereign Military Order of the Temple of Jerusalem	None	1988-Present

13. Employment Record

10/89 - Present	Assistant to the Secretary, U.S. Department of Veterans Affairs Washington, D.C.
3/89-10/89	Acting General Counsel, U.S. Department of Veterans Affairs, Washington, D.C.
3/85-3/89	General Counsel, Veterans Administration, Washington, D.C.
3/84-3/85	Director, Safety Review Task Force, U.S. Department of Transportation, Washington, D.C.
6/81-3/85	Chief Counsel, Federal Highway Administration, Washington, D.C.
6/78-6/81	Chief Counsel, Republican National Committee, Washington, D.C.
12/72-6/78	Associate (Attorney), Brault, Graham, Scott & Brault, Washington, D.C.
10/71-12/72	Law Clerk, District of Columbia Court of Appeals, Washington, D.C.
6/70-10/71	Law Clerk, District of Columbia Superior Court, Washington, D.C.
2/69-6/70	Law Clerk (Part-time), Brault, Graham, Scott & Brault, Washington, D.C.

9/68-6/71	Law Student, American University, Washington, D.C.
8/63-8/68	United States Army

14. Military Service

Active Duty

8/63-11/63	PVT E1	Trainee, United States Army Training Center, Fort Polk, Louisiana
11/63-5/64	SGT E5	Officer Candidate, United States Army Infantry Center, Fort Benning, Georgia (Honorable Discharge)
5/64-6/64	2LT	Airborne Trainee, United States Army Infantry Center, Fort Benning, Georgia
6/64-11/64	2LT	Armor Officer Basic Student, United States Army Armor Center, Fort Knox, Kentucky
1/64-5/65	2LT	Tank Platoon Leader, Co C, 3 Bn, 33 Armor, Kirchgoens, West Germany
5/65-10/65	2LT/1LT	Recon Platoon Leader, HQ, 3 Bn, 33 Armor, Kirchgoens, West Germany
10/65-5/60	1LT	Battalion Operations Officer, HQ, 3 Bn, 33d Armor, Kirchgoens, West Germany
5/66-2/67	1LT/CPT	Basic Training Company Commander, U.S. Army Training Center, Fort Campbell, Kentucky
2/67-3/67	CPT	Jungle Warfare Training Student, Panama Canal Zone
3/67-6/67	CPT	Troop Commander, 3/17 Air Cavalry, Fort Knox, Kentucky
6/67-10/67	CPT	Troop Executive Officer, 3/17 Air Cavalry, Fort Knox, Kentucky
10/67-8/68	CPT	Squadron Assistant Operations Officer and Liaison Officer, 3/17 Air Cavalry, Republic of Vietnam (Honorable Discharge)

Reserve Duty

6/69-9/69	CPT	Action Officer, Office, Chief, Army Reserve, Pentagon, Washington, D.C.
9/69-9/72	CPT	Action Officer, Office, Assistant Chief of Staff for Intelligence, the Pentagon, Washington, D.C.
9/72-4/75	CPT	Administrative Officer, 404th Military Intelligence Detachment, the Pentagon, Washington, D.C.
4/75-6/76	CPT	Inactive Status
6/76-7/76	CPT	Armor Officer Advanced Student, U.S.Army Armor Center, Fort Knox, Kentucky
12/76-9/84	CPT/MAJ	Assistant Operations Officer, 2070th U.S. Army Reserve School, Fort Belvoir, Virginia
9/84-9/85	MAJ	Command & General Staff Instructor, 2070th U.S. Army Reserve School, Fort Belvoir, Virginia
9/85-Present	MAJ/LTC	Staff Officer, HQ, Selective Service System, Washington, D.C.

15. Government experience: List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments other than those listed above.

NONE

16. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

NONE

17. Political affiliations and activities: (a) List all memberships and offices held in and financial contributions and services rendered to any political party or election committee during the last 10 years.

Chief Counsel - Republican National Committee 1979-1981

Contributions: Linda Amy for Congress - $50.00

Oberndorf for Mayor- $50.00

Mitchell for Senate (VA) - $50.00

(b) List all elective public offices for which you have been a candidate and the month and year of each election involved.

NONE

18. Future employment relationships:

(a) State whether you will sever all connections with your present employer, business firm, association, or organization if you are confirmed by the Senate.

YES

(b) State whether you have any plans after completing Government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization.

NO

(c) What commitments, if any, have been made to you for employment after you leave Federal service?

NONE

(d) (If appointed for a term of specified duration) Do you intend to serve the full term for which you have been appointed?

YES

(e) (If appointed for an indefinite period) Do you intend to serve until the next Presidential election?

NOT APPLICABLE

19. Potential conflicts of interest:

(a) Describe any financial arrangements, deferred compensation agreements, or other continuing financial, business, or professional dealings which you have with business associates, clients, or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

(b) List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

NONE

(c) Describe any business relationship, dealing, or financial transaction which you have had during the last 5 years, whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

NONE

(d) Describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any Federal legislation or for the purpose of affecting the administration and execution of Federal law or policy.

ATTACHED

(e) Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements involved.)

ATTACHED

20. Testifying before the Congress:

(a) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such committee?

YES

(b) Do you agree to provide such information as is requested by such a committee?

YES

19. Potential Conflicts of Interest:

(d) During my tenure as General Counsel of the Veterans Administration, and as part of the duties and responsibilities attendant to that position, I presented testimony to Congress on several occasions in support of the Administration's position on two (2) issues. On the issue of legislation which would establish a presumption of service-connection for certain diseases as a result of exposure to low levels of radiation, I testified in opposition to the legislation. On the issue of legislation which would provide for judicial review of VA decisions in individual benefits decisions, I also testified in opposition to the legislation. I am sure that, during my tenure at the Department of Transportation and at the Veterans Administration, I presented the position of the Administration to members of Congress and to staff on other issues, but I do not have records at my disposal which would reflect the specifics.

(e) I do not believe that any conflict of interest exists with respect to my answers to the above items. However, should the issue arise during my tenure as an Associate Judge on the U.S. Court of Veterans Appeals, I would address it on a case-by-case basis. It would be inappropriate for me to state a position on this or any other issue or case at this time.

SUPPLEMENTAL QUESTIONNAIRE
FOR NOMINEES TO THE UNITED STATES COURT OF VETERANS APPEALS
(To Be Made Public)

1. Bar associations: List all bar associations and legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association-intermittent membership since 1972-no office

District of Columbia Bar-1972-Present - no office

Bar Association of the District of Columbia, 1972-1982/1988-Present No Office

American Academy of Hospital Attorneys, 1988-89 - no office

Federal Bar Association - intermittent membership since 1981-no office

Republican National Lawyers Association - 1987-Present - no office

2. Court admissions: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

District of Columbia Court of Appeals, 1972-Present

Superior Court of the District of Columbia, 1972-Present

U.S. Court of Appeals, District of Columbia Circuit, 1972-Present

U.S. District Court for the District of Columbia, 1972-Present

U.S. Court of Military Appeals, 1972-Present

Supreme Court of the United States, 1976-Present

3. Judicial offices: State (chronologically) any judicial offices you have held and whether you were elected or appointed to them and provide a description of the jurisdiction of each such court.

NONE

4. Judicial opinions:

(NONE)

If you are or have been a judge, attach a statement providing (a) citations for the ten most significant opinions you have written, (b) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (c) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions listed were not officially reported, please provide copies of the opinions.)

5. Speeches:

(SEE ATTACHED)

Attach copies of all speeches you have given on issues involving constitutional law, legal policy, or matters relating to veterans' benefits. If there were press reports of any such speeches and they are readily available to you, please provide them.

6. Legal career:

(SEE ATTACHED)

(a) Attach a chronological description of your law practice and experience after graduation from law school, including (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk, (2) whether you practiced alone, and if so, the addresses and dates, and (3) the dates, names, and addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the nature of your connection with each.

(b) Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

ATTACHED

(c) Describe your typical former clients and the areas, if any, in which you have specialized.

ATTACHED

(d) State whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court has varied over time, describe each such variance, giving dates.

1972-1978 - Frequently

1978-1981 - Occasionally

1981-Present - Only as an observer

(e) State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel, and identify the courts.

During the period 1972-1978 I tried approximately 20-30 cases to verdict or judgment as sole or associate counsel in the Superior Court of the District of Columbia and the U.S. District Court for the District of Columbia.

7. Litigation: Attach a statement describing the ten most significant litigated matters which you personally handled. Give the citations of cases that were reported and the docket numbers and dates of those that were not. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case--

(a) the dates of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the names, addresses, and telephone numbers of the individuals who were co-counsel with you and principal counsel for each of the other parties.

(SEE ATTACHED)

8. Legal activities: Attach a statement describing the ten most significant legal activities you have pursued (other than the litigated matters referred to above). Describe the nature of your participation, but please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

(SEE ATTACHED)

9. Outside employment: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, please provide details.

NO

10. Party affiliation: State (a) your current political party affiliation and the place and date it was established, and (b) if you have in the past registered as being with a different party (or as an independent if not now registered as an independent), the place and inclusive dates of such registration.

Republican. I may have first registered as a Democrat in Eddy County, New Mexico in 1964, but do not recall. I have been a registered Republican since 1968, when I registered in the District of Columbia. I am now registered in the State of Virginia, County of Fairfax, which has non-partisan registration. However, I declare as a Republican to vote in primary elections.

11. Memberships in certain organizations:

The American Bar Association's Commentary to Canon 2 of its Code of Judicial Conduct states, "It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin." Do you currently belong, or have you belonged, to any organization which discriminates in this manner -- through either formal membership requirements or the practical implementation of membership policies? If so (a) list all such organizations of which you are or were a member, (b) provide the dates of your memberships, and (c) describe in each case the efforts you made to try to change the organization's discriminatory policies or practices.

I do not currently belong to any organization which discriminates on the basis of race, sex, religion or national origin. In the past, I have been a member of the Cub Scouts, the Boy Scouts DeMolay and Phi Delta Theta Fraternity (Social).

12. Services for disadvantaged persons:

(SEE ATTACHED)

The American Bar Association in its Comment to Rule 6.1 of its Model Rules of Professional Conduct calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Attach a statement describing what you have done to fulfill this responsibility, listing specific instances and the amount of time devoted to each.

13. Selection process: Has anyone involved in the process of selecting you as a nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

NO

AFFIDAVIT

)ss

Donald L. Ivers , being duly sworn, hereby states that he/~~she~~ has read and signed the foregoing answers to the Supplemental Questionnaire for Nominees to the United States Court of Veterans Appeals and that the information provided therein is, to the best of his/~~her~~ knowledge and belief, current, accurate, and complete.

Signature of Nominee

Subscribed and sworn before me this 14th day of May , 1990

Notary Public

UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS
QUESTIONNAIRE FOR PRESIDENTIAL NOMINEES

5. As a general rule, speeches given by me relating to legal policy or veteran's benefits were given from hand-written notes or extracted from hand-outs provided at a particular event, thus, there are no copies available.

6 (a). During the first eighteen (18) months after graduating from law school, I was law clerk to Chief Judge Andrew M. Hood of the District of Columbia Court of Appeals. From 1972-1978, I was an associate with the firm of Brault, Graham, Scott & Brault, 1314 - 19th Street, N.W., Washington, D.C., specializing in civil litigation in both the local and federal courts in the District of Columbia. From 1978-1981, I was Chief Counsel of the Republican National Committee. From 1981-1985, I was Chief Counsel of the Federal Highway Administration, U.S. Department of Transportation, and from 1985-1989, I was General Counsel of the Veterans Administration. On March 15, 1989, the Veterans Administration became a cabinet agency, the Department of Veterans Affairs. From March 15, 1989 to September 30, 1989, I was Acting General Counsel of the Department of Veterans Affairs. Since September 30, 1989, I have served as Assistant to the Secretary, Department of Veterans Affairs.

6 (b). During the period from 1972-1978, as an associate with the firm of Brault, Graham, Scott & Brault, I was responsible for a consistent caseload of approximately one hundred (100) cases. I was responsible for preparing each case for trial, to include arranging for investigations where needed, contacting and interviewing witnesses, conducting discovery to include preparation of interrogatories and answers to interrogatories, conducting depositions, preparing witnesses for depositions and for trial, trial or settlement of the case, and billing and closing the file. The majority of the cases were negligence cases, with a few commercial lease cases, contract cases, wills, and divorce cases included in the caseload.

During the period from 1978-1981 as Chief Counsel of the Republican Naitonal Committee, I was responsible for establishing an in-house legal capability for the Committee. As Chief Counsel, my duties included providing legal advice and analysis to the Chairman, his staff, and the Committee on a broad range of issues affecting national political party operations, such as fund raising, voter registration and ballot security, as well as on typical legal issues, such as contracts, leases and personnel matters. I was also responsible

for representation of the Committee before the Federal Election Commission and, on rare occasions, before the courts. Additionally, I served as Committee spokesman on legal issues, and spoke on legal issues at seminars, panel discussions and group meetings.

During the period from 1981-1989, I served as the chief legal officer of a small federal agency, the Federal Highway Administration, and then a much larger agency, the Veterans Administration. My responsibilities in those positions were primarily managerial, but included serving as chief legal advisor to the agency and to the Administrator, and serving as a member of the policy development staff. I also served as agency spokesman on legal issues, testifying before Congress, speaking at group meetings, seminars and training sessions.

6 (c). 1972-1978 Insurance companies, private individuals and small businesses

1978-1981, National political committee, its chairman, members, and employees.

1981-1989, Federal Agency, the Administrator of the agency, and agency employees.

7. The cases that I personally litigated were far from significant, except, of course, from the standpoint of the parties involved. They were routine cases of the type seen in every courtroom, in every jurisdiction in the country. They involved ordinary people seeking redress for losses sustained as a result of ordinary occurrences, such as automobile accidents, falls, damage as a result of construction activity, and disagreements over the terms of a contract or a lease. The records of these cases are no longer available to me and I do not recall specific details, such as parties, dates, judges, or other counsel. Few, if any, of the cases were reported, as virtually all of them were decided at the trial level and not appealed.

8. My legal career in both the private sector and the public sector, has been oriented on client service. Thus, the legal activities which I have pursued have been primarily client-directed or client-oriented. The most significant activities I have pursued have been in the public sector and include the following:

a. Participating in the drafting, passage and implementation of the Surface Transportation Act of 1981.

b. As part of the implementation of the Surface Transportation Act of 1981, I particpated in the drafting, rule-making, and implementation of the Minority Business Enterprise provisions of the Act, to include numerous appearances before industry groups and state officials to discuss the rules.

c. As part of the implementation of the Surface Transportation Act of 1981, I participated in the enforcement of that portion of the act which permited larger trucks on the interstate system. This involved appearances before numerous industry groups and state officials to discuss the rules; it also involved the coordination of litigation in a number of states.

d. Participation, as Chief Counsel of the Federal Highway Administration in a nation-wide crack-down on bid-rigging among various elements of the highway construction industry.

e. Participation as General Counsel of the Veterans Administration, in the public debate on judicial review of individual benefits determinations and, more significantly, participation in policy-level discussions within the Executive Branch on that issue.

f. Participation, as General Counsel of the Veterans Administration, in the public debate on presumption of service connection for both radiation and agent orange exposure and, more significantly, participation in policy-level discussions within the Executive Branch on those issues.

g. Participation, as General Counsel of the Veterans Administration, in the debate over the scope of the Davis-Bacon Act as it pertains to leasing of out-patient clinic facilities by the Veterans Administration and leasing by the Federal Government, in general.

Other significant legal activities that I have been involved in have taken significance from the result on behalf of a client, whether it is successful litigation, successful negotiation or merely the satisfaction of knowing that, based on my actions or advice, my client was able to accomplish a goal. To me, this is what has made the study and practice of law personally rewarding.

12. While in private practice, as an individual and as a member of the firm, I accepted referrals from the courts in both civil and criminal matters. While these referrals were infrequent, they helped fulfill my responsibility under the Model Rules and also heightened my awareness of the increasing need to make legal advice and services available to those who cannot afford to pay.

As a government attorney, I have sought to ensure that each employee of the agency or department where I was serving had access to me and to members of my staff for legal assistance, where appropriate, or guidance in seeking legal assistance. As a government attorney and a member of the bar, I have participated in the bar association's Law Day activities by teaching classes on Constitutional Law in the District of Columbia Public School System.

I firmly believe that no individual who is in need of legal assistance should be denied such assistance due to lack of knowledge of the legal system, fear of the legal system, or lack of funds.

United States
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

FEB 6 1990

The Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Mr. Donald L. Ivers, who has been nominated by President Bush for the position of associate judge on the United States Court of Veterans' Appeals.

We have reviewed the report and have also obtained advice from the United States Court of Veterans' Appeals concerning any possible conflict in light of its functions and the nominee's proposed duties. Based thereon, we believe that Mr. Ivers is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Donald E. Campbell

Donald E. Campbell
Acting Director

Enclosure

United States
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3917

May 29, 1990

The Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the revised financial disclosure report filed by Mr. Donald L. Ivers, who has been nominated by President Bush for the position of associate judge on the United States Court of Veterans' Appeals. This report was submitted by Mr. Ivers to update his earlier disclosure form, which I forwarded to you on February 6, 1990.

We have reviewed the report and have also obtained advice from the Court of Veterans' Appeals concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based on the foregoing, we believe that Mr. Ivers is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Donald E. Campbell

Donald E. Campbell
Acting Director

Enclosure

OGE-106
October 1989

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ALAN CRANSTON, CALIFORNIA, CHAIRMAN
FRANK H. MURKOWSKI, ALASKA
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ALAN C. PTAK, MINORITY CHIEF COUNSEL/STAFF DIRECTOR

United States Senate

COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510-6375

May 15, 1990

Donald L. Ivers, Esquire
Associate Judge-Designate, United States
Court of Veterans Appeals
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Dear Don,

I am writing to ask for your responses to judicial recusal concerns that arise in connection with your five years' service as VA General Counsel if you are confirmed an Associate Judge on the United States Court of Veterans Appeals.

Section 455 of title 28, United States Code, sets forth the circumstances under which justices, judges, or magistrates of the United States in general must disqualify themselves. Although that statute does not apply to judges of the Court of Veterans Appeals, I believe that judges on this court should comply with it, and I plan to introduce legislation to bring them within its scope. The statute provides in part:

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be called into question.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or a personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> * * *
>
> (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.

The American Bar Association's Code of Judicial Ethics, from which section 455 of title 28 was drawn, also addresses the issue of a judge's obligation to disqualify himself or herself under certain circumstances. The relevant portion of Canon 3C states:

C. DISQUALIFICATION

> (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:
>
> (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> (b) he has served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law [has] served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it; . . . .

The commentary on this point states:

> A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

It seems clear from the above material that the intent of both section 455 and Canon 3C, relating to disqualification, is to ensure not only the actual impartiality of Federal judges but also the appearance of their impartiality as well. With regard to the Court of Veterans Appeals, I believe strongly that both the impartiality and the appearance of the impartiality of the Judges is tremendously important to the veteran-appellants who will come before the Court.

So that I may better understand how you would approach the issue of recusing yourself in cases before the Court, I ask that you provide an explanation of what your plans would be in the following situations:

1. A case in which you, as General Counsel, provided formally or informally any legal advice to the Board of Veterans' Appeals (BVA) or to the Chief Benefits Director or a DVB/VBA official on an issue presented in the case when it was before the BVA or DVB/VBA.

2. A case in which you, as General Counsel, issued a legal opinion on a legal question involved in the case before the Court.

3. A case involving a legal question on which you, as General Counsel, had issued a legal opinion in a case other than the one before the Court.

4. A case in which you participated in VA's development of a policy being challenged in the case.

5. A case in which during your tenure the Office of the General Counsel, without your personal participation, took an action described in 1, 2, or 3, above, either (A) over your name, or (B) without your name being involved.

In responding to the above request, please discuss your views as to whether the appearance of a lack of impartiality might arise if you were to disqualify yourself in cases in which you had personally participated as General Counsel but not in a case involving circumstances described in either 3, 4, or 5(A) or (B), above, and your views on the extent to which the frequency with which you would find it necessary to recuse yourself or to consider recusal might hinder your performance as a Judge on this Court. Also, please discuss your responses to these questions with the appropriate officials in the Department of Justice and provide a summary of their position on these questions, including a copy of any written advice they provide.

I look forward to receiving your responses at your earliest convenience.

With warm regards,

Cordially,

Alan Cranston
Chairman

cc: Honorable Frank H. Murkowski

DONALD L. IVERS
ATTORNEY AT LAW

June 11, 1990

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Cranston:

In reviewing your letter of May 15, 1990, and the issues raised therein, I find that we are in complete agreement with respect to the importance of both actual impartiality and the appearance of impartiality on the part of Judges of the Court of Veterans Appeals. Veteran-appellants should expect, and receive, the same guarantee of impartiality afforded any litigant in the Federal Court System.

In considering recusal, I, like all members of the judiciary, would be obligated to carefully consider each case individually. The facts of the case, the parties to the case and the circumstances involved must be closely examined. While the language of Title 28, Section 455 of the United States Code and of Canon 3C of the ABA Canons of Judicial Ethics is mandatory in tone, recusal remains a determination to be made by a judge, based on the facts, parties, and circumstances involved in the particular case. That determination can only be made by the judge after careful, thoughtful evaluation. Unwarranted recusals may bring the same public disfavor to the bench and to an individual judge as failure to recuse might bring in a specific case.

It would, in my opinion, be difficult to provide a definitive response to each of the five situations set forth in your letter without the benefit of a great deal more information. However, I have examined those situations and have sought guidance not only from the statute (28 USC 455), and from Canon 3C of the ABA Code of Judicial Ethics, but also from Regulations Concerning Post Employment Conflict of Interest (5CFR 737).

In those regulations, at Section 737.5(d)(1), is found a definition for the term "participate personally and substantially," which casts further light on the scope or type of involvement to be contemplated in an ethical context somewhat analogous to that involved in the issues of judicial recusal. That definition is set forth below:

> (d) "Participate personally and substantially" - (1) Basic requirements. The restrictions of section 207(a) apply only to those matters in which a former Government employee had "personal and substantial participation," exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. "Substantially," means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular matter involving a specific party."

Bearing in mind the elements discussed earlier - the facts, parties and circumstances involved in a particular case - I am certain that, in those cases where my personal and substantial involvement existed, I would be required to recuse myself.

I cannot, with any accuracy, predict the frequency with which I would find it necessary to recuse myself or to consider recusal. I do, however, firmly believe that the frequency would not be sufficient to hinder my ability to perform as a Judge on the Court of Veterans Appeals. In that regard, I have taken steps to identify those cases in which I signed opinions directly relating to benefits issues in cases before the Board of Veterans Appeals. If confirmed, I will establish, within the administrative framework of the Court, a system whereby those specific cases can be identified as they are filed and can be evaluated as to the need for recusal or consideration of recusal. The number of cases potentially involved represents an almost insignificant (.007%) segment of the potential appeals from Board of Veterans Appeals decisions rendered during the past five years.

Furthermore, if confirmed, I assure you that I will approach every case fully mindful of the statutory provisions, the guidance provided by the ABA Canons of Judicial ethics and my duty as a member of the Federal judiciary to maintain objectivity and the appearance of impartiality.

I have discussed my response with appropriate officials at the Department of Justice and they are in agreement with the position taken.

I look forward to the opportunity to appear before the Committee on June 15.

Sincerely,

Donald L. Ivers

DONALD L. IVERS

ALAN CRANSTON, CALIFORNIA, CHAIRMAN
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ALAN C. PYAL, MINORITY CHIEF COUNSEL/STAFF DIRECTOR

United States Senate
COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510-6375

June 13, 1990

Donald L. Ivers, Esquire
Associate Judge-Designate, United States
Court of Veterans Appeals
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Dear Don,

I am writing in follow-up to your June 11, 1990, response to my letter of May 15, asking for your responses to recusal concerns that arise in connection with your five years' service as VA General Counsel if you are confirmed as an Associate Judge on the United States Court of Veterans Appeals. A letter similar to my May 15 letter to you was sent to Jonathan Steinberg, with whose nomination certain issues of judicial recusal also arise if he is confirmed.

Because this issue is one that may be raised at the June 15 hearing and so that you and Jon may each have the benefit of the other's reflection on these issues, I am providing each of you with a copy of the other's response to my letters on this issue.

Jon noted on page 2 of his June 11, 1990, letter to me the practice that Chief Judge Breyer of the United States Court of Appeals for the First Circuit has adopted for cases involving sentencing guidelines that he had helped write as a Circuit Judge serving on the Sentencing Commission. Please let me know your views on the advisability of your adopting such a practice.

I would also like you to provide a more specific discussion than you previously gave of the principles you would apply in a case involving the precise point of law on which you had rendered a General Counsel's opinion, though not in the specific case before the Court.

I would appreciate your responding to this letter no later than 5 p.m. on Thursday, June 14.

Thank you for your cooperation in this matter.

With warm regards,

Cordially,

Alan Cranston
Chairman

cc: Honorable Frank H. Murkowski

Enclosures

DONALD L. IVERS
ATTORNEY AT LAW

June 14, 1990

The Honorable Alan Cranston
Chairman,
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Cranston:

Thank you for your letter of June 13, and for sharing Jonathon Steinberg's responses to questions concerning recusal concerns.

Before responding to the follow-up inquiries contained in your letter, let me first correct an error in my letter of June 11. In paragraph 3 of page 2, I used the figure .007%, indicating the approximate percentage of potential appeals from Board of Veterans Appeals decisions rendered during my tenure as General Counsel that could involve opinions that I signed. The correct figure is 0.07%.

You have asked for my views on the advisability of adopting the practice utilized by Judge Breyer of the United States Court of Appeals for the First Circuit. Judge Breyer, in his separate memorandum filed with the court's opinion in U.S. vs. Wright, 873 F. 2d 437, 455 (1st Cir. 1989), seems to indicate that his system is intended for use only in those cases involving the sentencing guidelines, thus establishing a clearly defined class of case in which Judge Breyer would invite motions for recusal without indication as to the party making the motion. While I have no problem with a limited application of the concept of motions for recusal without identification of the moving party, I am at a loss as to a means by which to identify a particular class of case, other than those in which I have signed an opinion, which would lend itself to Judge Breyer's system. As I indicated in my June 11 response, if I am confirmed I will establish a system whereby cases in which I have signed an opinion will be identified and evaluated with regard to recusal. In those cases, as with Judge Breyer's sentencing guidelines cases, recusal would not

be automatic, but would require the existence of special circumstances, such as a substantial challenge to the opinion itself or a situation in which I had taken a strong position on the merits of that particular case. In any event, my approach to the issue of recusal would be to always keep in mind the need for impartiality and the appearance of impartiality and to apply the test of reasonableness to the question of impartiality. Since one of the essential elements in evaluating a case for recusal is the parties, they must, in most cases, be known to the judge. Identification of the moving party where a motion for recusal is made is not necessary unless the party constitutes one of the grounds for the motion. I would be willing to adopt Judge Breyer's system with regard to those cases in which, as General Counsel, I signed an opinion. Beyond that, I see no particular benefit to be gained by the court or by the parties by applying Judge Breyer's system. Motions to recuse are always available to the parties. Decisions to recuse, pursuant to the motion of a party or upon the judge's own motion, remain the province of the individual judge, based on a full and careful evaluation of a specific case.

You have also asked for a discussion of the principles I would apply with regard to the question of recusal in a case involving a precise point of law in which I had rendered a General Counsel opinion, though not in the specific case being considered. In that instance, I would not be inclined to recuse myself unless I was convinced, after careful review of the parties, facts and circumstances in the case before the court, that my impartiality might reasonably be called into question based upon more than having expressed or even issued an opinion as to a legal issue involved in the case.

I hope that this letter provides the necessary clarification sought in your letter of June 13.

Again, I look forward to appearing before the committee tomorrow at 9:30.

Sincerely,

Donald Ivers

DONALD L. IVERS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Steinberg (LAST) Jonathan (FIRST) Robert (OTHER)

Present address: 11204 Hawhill End (CITY) Potomac (STATE) MD (ZIP CODE) 20854

Position to which nominated: Associate Judge U.S. Court of Veterans Appeals

Date of nomination: May 15, 1990

Date of birth: 3 (DAY) 1 (MONTH) 39 (YEAR)

Place of birth: Philadelphia, PA

Marital status: Married

Full name of spouse: Rochelle Helene Schwartz Steinberg

Names and ages of children: Andrew Joshua Steinberg (25)

Amy Judith Steinberg (22)

Education:

Institution (including city and State)	Dates attended	Degrees received	Dates of degrees
Central High School Philadelphia, PA	1952-56	A.B.	June 1956
Cornell University Ithaca, NY	1956-60	B.A.	June 1960
University of Pennsylvania School of Law Philadelphia, PA	1960-63	L.L.B.	June 1963

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Sphinx Head Honor Society - Cornell University - 1959

Order of the Coif - University of Penn. Law School - 1963

DAV National Commander's Award - 1978

Project Head Start Appreciation Award - 1984

Received Law School degree cum laude

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable, and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
Alpha Epsilon Pi Fraternity	Life Member	1956-present
Eldwick Swim & Tennis Club	Member	1980 approx.-present
Bethany West Recreation Assn.	Member	1973-present
Bethany West Recreation Assn.	Board of Dirs.	1973-82; 1984-present
	Tennis Chairman	(currently)
	Legal Liaison	(currently)
D.C. Bar Association	Member	1964-present
Post Office Mailhandlers Union	Assoc. Member	1980 approx.-Jan. 1990
AARP	Member	1989-present
Beneficial Assoc. of Capital Empls.	Member	Jan. 1990-present

Employment record: List below all employment (except military service) since your twenty-first birthday, including the title or description of job, name of employer, location of work, and inclusive dates of employment.

6/61-8/61-Law Clerk, Steinberg, Richman, Greenstein and Price, Phila., PA

6/62-8/62-Research Ass't., American Law Institute, Univ. of Penn. Law School, Philadelphia, PA

8/63-6/64-Law Clerk, Hon. Warren E. Burger, U.S. Ct. of Appeals for D.C. Circuit, Washington, D.C.

8/64-3/69-Attorney Advisor and Deputy General Counsel (1968-69), Peace Corps, Wash., D.C.

(Continued on Insert #1)

Military service: List below all military service (including reserve components and National Guard or Air National Guard), with inclusive dates of service, rank, permanent duty stations and units of assignment, titles, descriptions of assignments, and type of discharge.

None

Insert # 1

(Continued from page 2)

3/69-1/77-Counsel to 3 subcommittees (69-71 Subcommittee on Veterans' Affairs; 71-73, Subcommittee on Railroad Retirement; and 71-77, Special Subcommittee on Human Resources), Committee on Labor and Public Welfare, U.S. Senate, Wash., D.C.
1/77-1/81-Chief Counsel, Committee on Veterans' Affairs, U.S. Senate, Wash., D.C.
1/81-1/87-Minority Chief Counsel and Staff Director, Committee on Veterans' Affairs, U.S. Senate, Wash., D.C.
1/87-present-Chief Counsel and Staff Director, Committee on Veterans' Affairs, U.S. Senate, Wash., D.C.

Government experience:

List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments other than those listed above.

None

Published writings:

List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

Author, Notice and Hearing in Government Exclusionary Action, Univ. of Pennsylvania Law Review 1009 (1962)

Political affiliations and activities:

1. List all memberships and offices held in and financial contributions and services rendered to any political party or election committee during the last 10 years.

$100-Ray Mabus for Governor of Mississippi

$50-Max Cleland for Secretary of State of Georgia

$50-Jack Wickes for U.S. Senator from Indiana

2. List all elective public offices for which you have been a candidate and the month and year of each election involved.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association, or organization if you are confirmed by the Senate.

Yes

2. State whether you have any plans after completing government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization.

I have no such plans.

3. What commitments, if any, have been made to you for employment after you leave Federal service?

None

4. (If appointed for a term of specified duration) Do you intend to serve the full term for which you have been appointed?

Yes

5. (If appointed for an indefinite period) Do you intend to serve until the next Presidential election?

Not applicable

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements, or other continuing financial, business, or professional dealings which you have with business associates, clients, or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None of which I am aware.

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None of which I am aware.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last five years, whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None of which I am aware.

4. Describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any Federal legislation or for the purpose of affecting the administration and execution of Federal law or policy.

I have been employed in the U.S. Senate since 1969. My official responsibilities have always involved seeking to influence the passage, defeat, and modification of Federal legislation and to affect the execution of Federal law or policy in the Executive Branch.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements involved.)

Not applicable

Testifying before the Congress:

1. Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such committee?

Yes

2. Do you agree to provide such information as is requested by such a committee?

Yes, except to the extent not consistent with the confidentiality of communications within the Court.

SUPPLEMENTAL QUESTIONNAIRE
FOR NOMINEES TO THE UNITED STATES COURT OF VETERANS APPEALS
(To Be Made Public)

Submitted by Jonathan R. Steinberg, Nominee to be
Associate Judge, U.S. Court of Veterans Appeals

1. Bar associations: List all bar associations and legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association--approximately 1970-75
D.C. Bar Association--1963 to present

2. Court admissions: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

U.S. Court of Appeals for D.C. Circuit--Sept. 1964

3. Judicial offices: State (chronologically) any judicial offices you have held and whether you were elected or appointed to them and provide a description of the jurisdiction of each such court.

None

4. Judicial opinions: If you are or have been a judge, attach a statement providing (a) citations for the ten most significant opinions you have written, (b) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (c) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions listed were not officially reported, please provide copies of the opinions.)

None

5. Speeches: Attach copies of all speeches you have given on issues involving constitutional law, legal policy, or matters relating to veterans' benefits. If there were press reports of any such speeches and they are readily available to you, please provide them.

No speeches I have given were made from prepared texts. I am not aware of any press reports of any such speeches.

6. Legal career:

(a) Attach a chronological description of your law practice and experience after graduation from law school, including (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk, (2) whether you practiced alone, and if so, the addresses and dates, and (3) the dates, names, and addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the nature of your connection with each.

(b) Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

1. 8/63-7/64. Law Clerk, Honorable Warren E. Burger, U.S. Court of Appeals for the D.C. Circuit; Wash., D.C.

9/64-3/69. Attorney Advisor and Deputy General Counsel (1968-69), Office of the General Counsel, Peace Corps; Wash., D.C.

3/69-1/77. Counsel to the following Subcommittees of the Labor and Public Welfare Committee, U.S. Senate; Wash., D.C.: Subcommittee on Veterans' Affairs (69-71); Subcommittee on Railroad Retirement (71-73); Special Subcommittee on Human Resources (71-77).

1/77-1/81. Chief Counsel, Committee on Veterans' Affairs, U.S. Senate; Wash., D.C.

1/81-1/87. Minority Chief Counsel and Staff Director; Committee on Veterans' Affairs, U.S. Senate; Wash., D.C.

1/87-present. Chief Counsel and Staff Director, Committee on Veterans' Affairs, U.S. Senate; Wash., D.C.

2. Peace Corps: Researched various legal questions relating to the Peace Corps Act and general government law. Drafted legislation for transmission to Congress. Advised the General Counsel, various officers, including the Director, the Deputy Director, the Associate Directors, the Regional Directors, and other agency "clients" on legal and policy issues involved in Peace Corps operations. Reviewed and analyzed full field investigations of Peace Corps Volunteer trainees by the Civil Service Commission and Federal Bureau of Investigation.

U.S. Senate: Participated in the drafting of legislation, floor statements, Committee reports, conference reports, speeches, and explanatory legislative materials. Analyzed various legislative proposals and existing statutes and advised the Chairman or Ranking Minority Member (U.S. Senator Alan Cranston) and other Committee members with respect to same.

c. Describe your typical former clients and the areas, if any, in which you have specialized.

My clients at the Peace Corps were agency officials responsible for the welfare of Peace Corps Volunteers and trainees overseas and the operation of the Peace Corps generally. My clients in the U.S. Senate have been U.S. Senators.

d. State whether you have appeared in court frequently, occasionally, or not at all? If the frequency of your appearances in court has varied over time, describe each such variance, giving dates.

Not at all.

e. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel, and identify the courts.

None

7. Litigation: Attach a statement describing the ten most significant litigated matters which you personally handled. Give the citations of cases that were reported and the docket numbers and dates of those that were not. Give a capsule summary of the substance of each case.

Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case--

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the names, addresses, and telephone numbers of the individuals who were co-counsel with you and principal counsel for each of the other parties.

None

8. Legal activities: Attach a statement describing the ten most significant legal activities you have pursued. Describe the nature of your participation, but please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

See attached statement.

9. Outside employment: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, please provide details.

No

10. Party affiliation: State (a) your current political party affiliation and the place and date it was established, and (b) if you have in the past registered as being with a different party (or as an independent if not now registered as an independent), the place and inclusive dates of such registration.

Democrat, Montgomery County, Maryland, since 1963; before that, I was registered as a Democrat in Philadelphia, PA, beginning in 1960, I believe.

11. Memberships in certain organizations: The American Bar Association's Commentary to Canon 2 of its Code of Judicial Conduct states, "It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin." Do you currently belong, or have you

belonged, to any organization which discriminates in this manner -- through either formal membership requirements or the practical implementation of membership policies? If so (a) list all such organizations of which you are or were a member, (b) provide the dates of your memberships, and (c) describe in each case the efforts you made to try to change the organization's discriminatory policies or practices.

The only such organizations I am aware of that might be so classified (although I am not sure whether the exclusions would be considered "individious") is my college fraternity, Alpha Epsilon Pi, which does not admit women, and an honor society at Cornell University, Sphinx Head Society, which does not admit women insofar as I know. At Cornell, my AEPi chapter, Beta, integrated the fraternity racially by inducting into brotherhood Harry Edwards, now Circuit Judge, U.S. Court of Appeals for the D.C. Circuit. I was actively involved in bringing about this action despite some opposition from the national fraternity structure. Although AEPi was almost entirely a Jewish fraternity, it did admit non-Jewish members, nationally and at Beta Chapter. I served as secretary of my chapter during my sophomore year.

Regarding Sphinx Head, I was inducted in the second semester of my Junior year, I believe, and served as Secretary during my senior year. The Society was a service and social group comprised of athletes and those active in extracurricular activities. There was a similar honor society for women. I took no actions to bring women into the Society, nor did any other member during my membership as an undergraduate; the issue never arose then, nor since then insofar as I know. As far as I can recall, Sphinx Head did not exclude racial or ethnic minorities.

12. Services for disadvantaged persons: The American Bar Association in its Comment to Rule 6.1 of its Model Rules of Professional Conduct calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Attach a statement describing what you have done to fulfill this responsibility, listing specific instances and the amount of time devoted to each.

I believe that my entire period of service in the Senate has included a substantial commitment of time and effort on my part to meet many of the needs of economically and educationally disadvantaged individuals.

While serving on the staff of the Labor and Public Welfare Committee (later Labor and Human Resources), I played a major role in the development of the Emergency Employment Act of 1971, the Comprehensive Employment and Training Act of 1973, the Domestic Volunteer Service Act of 1973 and the 1976 and 1979 amendments to it, the Legal Services Corporation Act of 1974 and subsequent amendments to it, the Rehabilitation Act of 1973 and the 1974 and 1978 amendments to it, the Equal Employment Opportunity Amendments of 1974, various Older Americans Act amendments, much anti-poverty and drug and alcohol abuse treatment, education, and prevention legislation, and much health legislation designed to assist various ethnic minorities and low-income persons. This legislation contributed substantially to bettering the health, education, employment, training, rehabilitation, legal rights and protections, or general well-being of low-income, minority group, elderly, educationally disadvantaged, or disabled individuals.

While serving on the staff of the Veterans' Affairs Committee since 1977 and prior to that since 1969 on the Labor Committee staff, I have been committed to the furthering of the rights and interests and meeting the needs of disabled veterans, educationally disadvantaged veterans, low-income veterans, and minority group veterans. For example, I played a major role in the development of legislation to increase GI Bill educational assistance allowances and the rates of disability compensation and DIC since 1969; to establish special tutorial, work-study, and prediscbarge education programs and benefits for GI Bill trainees and a targeted-delimiting-date extension for certain less-educated GI Bill trainees; to promote employment opportunities for disabled and unemployed and underemployed veterans; to expand adapted housing and adaptive automobile grants and assistance for disabled veterans and expand and improve many other programs to assist disabled veterans and their families; to reform and improve the veterans' pension program for low-income veterans; to establish the readjustment counseling (Vet Center) program for Vietnam-era veterans; to ensure low-income veterans of access to VA health care; and to provide judicial review for claimants denied benefits by the Department of Veterans Affairs.

13. Selection process: Has anyone involved in the process of selecting you as a nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No

AFFIDAVIT

Jonathan R. Steinberg, being duly sworn, hereby states that he/she has read and signed the foregoing answers to the Supplemental Questionnaire for Nominees to the United States Court of Veterans Appeals and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Jonathan R. Steinberg
Signature of Nominee

Subscribed and sworn before me this 8th day of June, 1990

Notary Public
NOTARY PUBLIC
DISTRICT OF COLUMBIA

MY COMMISSION EXPIRES JANUARY 31, 1994

United States
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3917

May 30, 1990

The Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Mr. Jonathan R. Steinberg, who has been nominated by President Bush to be an associate judge on the United States Court of Veterans Appeals.

We have reviewed the report and have also obtained advice from the Court of Veterans Appeals concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based thereon, we believe that Mr. Steinberg is in compliance with the applicable laws and regulations governing conflicts of interest.

Sincerely,

Donald E. Campbell

Donald E. Campbell
Acting Director

Enclosure

ALAN CRANSTON, CALIFORNIA, CHAIRMAN
SPARK M. MATSUNAGA, HAWAII
DENNIS DECONCINI, ARIZONA
GEORGE J. MITCHELL, MAINE
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
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ARLEN SPECTER, PENNSYLVANIA
JAMES M. JEFFORDS, VERMONT
JONATHAN R. STEINBERG, CHIEF COUNSEL/STAFF DIRECTOR
ALAN C. FTAK, MINORITY CHIEF COUNSEL/STAFF DIRECTOR

United States Senate
COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510-6375

May 15, 1990

Jonathan R. Steinberg, Esquire
Associate Judge-Designate, United States
Court of Veterans Appeals
Committee on Veterans' Affairs
U.S. Senate
414 Russell Senate Office Building
Washington, D.C. 20510

Dear Jon,

I am writing to ask for your responses to judicial recusal concerns which, if you are confirmed an Associate Judge on the United States Court of Veterans Appeals, may arise in connection with your 21 and a half years of service on the staff of first the Veterans' Affairs Subcommittee of the then-Labor and Public Welfare Committee and then the Veterans' Affairs Committee.

Section 455 of title 28, United States Code, sets forth the circumstances under which justices, judges, or magistrates of the United States in general must disqualify themselves. Although that statute does not apply to judges of the Court of Veterans Appeals, I believe that judges on this court should comply with it, and I plan to introduce legislation to bring them within its scope. The statute provides in part:

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be called into question.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> > (1) Where he has a personal bias or prejudice concerning a party, or a personal knowledge of disputed evidentiary facts concerning the proceeding;
> >
> > * * *
> >
> > (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.

The American Bar Association's Code of Judicial Ethics, from which section 455 of title 28 was drawn, also addresses the issue of a judge's obligation to disqualify himself or herself under certain circumstances. The relevant portion of Canon 3C states:

C. DISQUALIFICATION

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he has served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law [has] served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;. . . .

The commentary on this point states:

A lawyer in a government agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

It seems clear from the above material that the intent of both section 455 and Canon 3C, relating to disqualification, is to ensure not only the actual impartiality of Federal judges but also the appearance of their impartiality as well. With regard to the Court of Veterans Appeals, I believe strongly that both the impartiality and the appearance of the impartiality of the Judges is tremendously important to the veteran-appellants who will come before the Court.

So that I may better understand how you would approach the issue of recusing yourself in cases before the Court, I ask that you provide an explanation of what your plans would be in the following situations:

1. A case in which you provided formally or informally any legal or policy advice to a member of the Senate on an issue presented in the case when it was before the BVA or DVB/VBA.

2. A case involving a legal question on which you had provided formally or informally any legal or policy advice to a member of the Senate in a context other than the case before the Court.

3. A case in which you participated in the development of a policy being challenged in the case.

In responding to the above request, please discuss your views as to whether the appearance of a lack of impartiality might arise if you were to disqualify yourself in cases in which you had personally participated as a Committee staff member, as described in 1, above, but not in cases involving circumstances described in either 2 or 3, above, and your views on the extent to which the frequency with which you would find it necessary to recuse yourself or to consider recusal might hinder your performance as a Judge on this Court. Also, please discuss your responses to these questions with the appropriate officials in the Office of Legal Counsel of the Senate and provide a summary of that office's position on these questions, including a copy of any written advice that office might provide.

I look forward to receiving your responses at your earliest convenience.

With warm regards,

Cordially,

Alan Cranston
Chairman

cc: Honorable Frank H. Murkowski

ALAN CRANSTON, CALIFORNIA, CHAIRMAN
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ALAN G. FINE, MINORITY CHIEF COUNSEL/STAFF DIRECTOR

United States Senate
COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510-6375

June 13, 1990

Jonathan R. Steinberg, Esquire
Associate Judge-Designate, United States
Court of Veterans Appeals
Committee on Veterans' Affairs
U.S. Senate
414 Russell Senate Office Building
Washington, D.C. 20510

Dear Jon,

I am writing in follow-up to your June 11, 1990, response to my letter of May 15, asking for your responses to recusal concerns which, if you are confirmed as an Associate Judge on the United States Court of Veterans Appeals, may arise in connection with your service on Senate staff. A letter similar to my May 15 letter to you was sent to Don Ivers, as to whom certain issues of judicial recusal may also arise if he is confirmed.

Because this issue is one that may be raised at the June 15 hearing and so that you and Don may each have the benefit of the other's reflection on these issues, I am providing each of you with a copy of the other's response to my letters on this issue.

With warm regards,

Cordially,

Alan Cranston
Chairman

cc: Honorable Frank H. Murkowski

Enclosure

11204 Hawhill End
Potomac, MD 20854
June 11, 1990

Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman,

I am responding to your May 15 letter asking my present plans, in light of my extensive involvement in veterans' legislation and issues as an employee of this Committee and the Senate Labor Committee over the last 21 years, for disqualifying myself on certain cases that may come before the United States Court of Veterans Appeals if I am confirmed as an Associate Judge on that Court.

In preparing this response, I have, as you suggested, consulted with Michael Davidson, Senate Legal Counsel, and he will summarize his views on this letter in a separate letter to you. I have also consulted with Judge John Cogan of the United States Tax Court, who served prior to his appointment thereto as Legislative Assistant for Senator Packwood and then as Chief Counsel of the Senate Finance Committee when the 1986 Tax Code revision was being written, and with Chief Judge Steven Breyer of the United States Court of Appeals for the First Circuit, who served as Chief Counsel of the Senate Judiciary Committee immediately before his appointment.

A. In your letter, you quote from 28 U.S.C. 455, which you state does not apply to the Court of Veterans Appeals but which you believe should be complied with by Judges on the Court. I agree with you and would certainly intend to carry out my duties in connection with the Court, if I am confirmed, in accordance with that statute and with the American Bar Association's Code of Judicial Ethics, which you also cite and quote from (specifically Canon 3C).

On the general matter of judicial disqualification, I find considerable guidance in the memorandum opinion of then Mr. Justice Rehnquist in Laird v. Tatum, 409 U.S. 824 (1972), and Judge Breyer's recent opinion, citing that opinion with approval, in U.S. v. Wright, 873 F.2d 437, 445 (1st Cir. 1989). I draw the following principles from these opinions and my consultations:

As a general matter, where there is no conflict of interest as defined in subsection (b) of section 455 of title 28, I am inclined at this point to view the question of disqualification as one requiring careful analysis by the judge of all factors in the particular case.

I have reviewed the legislative history of the 1974 amendments to 28 U.S.C. 455 (Public Law 93-512) and judicial interpretations thereof and recognize the strong concern of the Congress that the appearance of impartiality must be maintained in the Federal judiciary. I am in total agreement with that goal and philosophy.

Although generally I would probably not be inclined to disqualify myself from a case involving legislation I had worked on as a Senate employee, I can envision certain circumstances when I would be likely to find that the need for preserving the appearance of fairness would lead to my deciding to disqualify myself. I would endeavor at all times to be sensitive to the existence of such situations and would disqualify myself on my own initiative where my impartiality could reasonably be questioned. I note that the case law seems quite clear that the test under subsection (a) of section 455 is whether a reasonable member of the public at large, aware of all the circumstances and facts, would harbor doubts about the judge's impartiality. See, e.g., Chitimacha Tribe of Lousiana v. Harry L. Laws Co., Inc., 690 F. 2d 1157 (1982), reh. denied, 697 F. 2d 1092 (1982), cert. denied, 464 U.S. 814 (1982); and Laxalt v. McClatchy, 602 F. Supp. 214 (D. Nev. 1985).

Further, I would intend to follow the same practice that Chief Judge Breyer has adopted when sitting on cases involving the sentencing guidelines that he helped write as a Circuit Judge serving on the Sentencing Commission. See U.S. v. Wright, 873 F.2d at 447. I would ask the clerk of the Court to give public notice that parties in a case coming before me may file requests for my disqualification and the clerk, if requested by a party, would submit them to me without identification as to the proposing party. In appropriate cases, I would also consult with the Chief Judge on disqualification questions and might ask the parties to brief the issue where I was in doubt.

Specifically, my general inclination would be to disqualify myself in three circumstances:

(1) In the case of a constitutional challenge to a provision of law I had participated substantially in drafting.

(2) Where I concluded that my own involvement on an issue had been so substantial and I had taken such a strong position that my impartiality might reasonably be questioned.

(3) Where I had previously formed a firm opinion as to the merits of a particular case which had been presented to me in my Senate capacity.

As I said, these are my present general inclinations regarding disqualification under subsection (a) of section 455. I note, however, that the circumstances of a particular case might cause me to conclude otherwise. For example, I believe that the greater the elapse of time since my previous involvement and the greater the amount of time that I had been in a judicial capacity, the less likely I probably would be to conclude that my impartiality could reasonably be questioned.

B. In specific response to your questions as to my plans for disqualification in three specific situations should I be confirmed, I offer the following:

1. A case in which I provided formally or informally any legal or policy advice to a member of the Senate on an issue presented in the case when it was before the BVA or DVB/VBA.

In such a case, I would be inclined to disqualify myself if the Senator had taken a position urging a result in the case pursuant to my recommendation. I would be less inclined to disqualify myself if the Senator had done no more then make a relatively routine inquiry in the case, but the circumstances of the particular case would have to be considered very carefully in terms of the appearance of impartiality. Of course, it is also possible that such a case might also fit under point A.(3) on the preceding page. (At this point, I am not prepared to conclude, after a review of the legislative history of Public Law 93-512, that subsection (b)(3) of section 455 applies to a situation where a staff member gives advice to a Senator on a particular case in the same way as it would apply to the involvement of an executive branch employee in formulating the Government's position as a party in a particular case or on a particular issue. It seems to me this may be a question that requires legislative or other clarification. Of course, the "impartiality" standard in subsection (a) would be applicable in any event.)

2. A case involving a legal question on which I had provided formally or informally any legal or policy advice to a member of the Senate in a context other than the case before the Court.

In such a case, I would be inclined to sit, generally applying the principles set forth by Justice Rehnquist in his Laird v. Tatum opinion. The closer the matter was to being one of general statutory policy I had been involved with (as distinguished from the application of that policy to a specific case), the less likely I would probably be to disqualify myself. The closer the matter I had been involved with was to the facts of or issues predominant in the case, the more likely I would probably be to disqualify myself. As noted above in my general discussion, I would intend to establish the procedure for anonymous party requests that I disqualify myself.

I note that Mr. Justice Rehnquist, in deciding not to disqualify himself in Laird v. Tatum even though he had testified before Congress on the very constitutional issue then before the Court, said (at 400 U.S. at 839):

> ... it is not a ground for disqualification that a judge has prior to his nomination expressed his then understanding of the meaning of some particular provision of the Constitution.

In amending 28 U.S.C. 455 in 1974, the Congress did not, in my opinion, reject this reasoning.

3. A case in which I participated in the development of a policy being challenged in the case.

I would be inclined to disqualify myself in case of a Constitutional challenge to the policy. For example, I think it would probably be difficult to maintain the appearance of fairness if I were to rule on the constitutionality of a statute I had helped draft.

However, the passage of time might change my view on that, and I note that Mr. Justice Rehnquist in his Laird opinion stressed that Mr. Justice Black had sat on the case (U.S. v. Darby, 312 U.S. 100 (1941), upholding the constitutionality of the Fair Labor Standards Act of which he had been the principal author while a United States Senator. 400 U.S. at 831. Again, each such question would have to be considered on its particular facts, and it would not be appropriate for me to utilize in deciding the case any knowledge of legislative history that was not part of the publicly available documented record.

C. Finally, you asked me to discuss my views as to the appearance of a lack of impartiality if I were to disqualify myself in the first situation above and not in either the second or third instances and my views on the extent to which the frequency with which I might find it necessary to disqualify myself or consider recusal might hinder my performance as a Judge on this Court. On the first question, I believe the distinctions I have set forth above constitute logical and rational bases for making disqualification decisions; moreover, it is not unlikely that there could be cases in all three categories in which I might decide to disqualify myself.

On the second question, I do not believe I would be called upon or would be inclined to disqualify myself in any substantial number of cases and thus see no significant hindrance to my performance on the Court. Nor do I see any hindrance to my performance on the Court in my considering disqualification where such consideration would be appropriate. Again, I note that I would intend to establish the anonymous disqualification-request procedure for parties that I outlined above.

I hope that this letter satisfactorily answers the questions in your May 15 letter. I would be glad to try to clarify any further concerns.

Sincerely,

Jonathan R. Steinberg
Nominee for Associate Judge
United States Court of
Veterans Appeals

cc: Honorable Frank H. Murkowski

SARGENT SHRIVER
1350 NEW YORK AVE., N.W., SUITE 500
WASHINGTON, D.C. 20005

June 11, 1990

The Honorable Alan Cranston
Chairman
Committee on Veterans Affairs
United States Senate
414 Russell Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I write to express my pleasure at President Bush's nomination of Jonathan R. Steinberg to be an Associate Judge on the Court of Veterans' Affairs and to urge that the Committee on Veterans' Affairs report favorably and recommend that the Senate give its advice and consent to this nomination.

Jon, as a young man, was a most valued member of the Peace Corps General Counsel's staff, and as such he was one of the most diligent, tenacious and effective advocates the Peace Corps ever had.

Because Jon has continued to take an interest in the survival and growth of the Peace Corps during the many years that he has worked for the Senate, I have kept in contact with him. For example, I know that Jon worked closely with you in 1981 on the legislation which made the Peace Corps again an independent agency. The enactment of that legislation has contributed materially to the revitalization of the Peace Corps. Jon again impressed me with his sincerity, loyalty, ingtelligence and commitment to public service.

While employed by the Senate Labor and Human Welfare Committee, Jon contributed substantially to the preservation of the Legal Services Corporation, Head Start, Community Action and employment programs started by the Office of Economic Opportunity.

When Jon worked for me in the Peace Corps there was never any reason to question his high ethical standards. Indeed, he was regarded as a model of punctilious behavior by all of his colleagues. I am sure that he has continued to adhere to those stadards while employed by the United States Senate.

It is an honor for me to support the President's appointment of Jon to this important new office.

Sincerely yours,

Sargent Shriver

Sargent Shriver

The American Legion

For God and Country

WILLIAM M. BISHOP
NATIONAL EXECUTIVE COMMITTEEMAN
DEPARTMENT OF ALASKA
★
P.O. BOX 687
KODIAK, ALASKA 99615
★
AMERICAN LEGION:
OFFICE: 907-486-3258 907-486-5757
FAX: 907-486-6588

May 24, 1990

Hon. Frank Murkowski
United States Senate
709 Hart Building
Washington, D.C. 20510

IN RE: U.S. COURT OF VETERANS APPEALS APPOINTMENTS

Dear Senator Murkowski:

I understand that Jon Steinberg is being considered for this appointment.

It is my understanding that he is not a veteran and that during the Vietnam conflict joined the Peace Corps.

The veteran community would have reason to be and I am sure would be very upset if this is the person appointed to such a position.

Respectfully,

WILLIAM M. BISHOP
WMB/lm

ADJUTANT, VFW POST 7233
P.O. Box 1047
Hayward, WI, 54843
February 5, 1990

Robert W. Kasten, Jr.
U. S. Senator
110 Hart
Senate Office Bldg.
Washington, D.C. 20510

Herbert H. Kohl
U.S. Senator
708 Hart
Senate Office Bldg.
Washington, D.C.20510

David R. Obey
U.S. Representative
2462 Rayburn House Bldg.
Washington, D.C. 20515

Dear Sirs:

The 235 members of VFW Post 7233 have directed that you be contacted hereby, in order that their concerns and opposition be stongly expressed concerning the present consideration for nomination and appointment of a Mr. Jonathan Steinberg to the newly created Court of Veterans Appeals. Our understanding is that Mr. Steinberg is one of the basically unrepentant former anti-Vietnam war activists, along with Tom Hayden, Jane Fonda, Abbie Hoffmann, Father James Groppi, and others. Unreasonable as it seems, such people continue to reap the abundant monetary or political benefits fought for by all veterans. It is our feeling that such a person should not be honored even by being considered for such a position as a member of the Court of Veterans Appeals, and that if appointed he would neither be able to make unbiased decisions nor receive the respect or faith of any veteran concerned with his decisions.

We thank you for all past, present, and future decisions and actions made by you that beneficially affects all veterans who served their country faithfully both in times of peace and in times of war. Again, we urge you to strongly, effectively, and actively oppose Mr. Steinberg in his disgraceful efforts both now and in the future.

Please kindly inform us of your opinion and intentions on this matter.

Sincerely and Respectfully,

Frank H. Bosworth

Frank H. Bosworth
VFW Post 7233, Adjutant

[From Human Events, Aug. 19, 1989]

VIET WAR PROTESTER MAY GET JUDGESHIP POST

(By Tom Pauken)

Anyone familiar with the current political scene in Washington runs the risk of becoming cynical about how our political system functions "inside the beltway." But a recent story in the Washington *Post* that the Bush Administration intends to nominate an unrepentant Vietnam War protester to the newly created Court of Veterans Appeals (see HUMAN EVENTS, July 22, page 2) is enough to make even a hardboiled cynic wonder what in the world is going on in our Nation's Capital these days.

The appointee in question is Jonathan Steinberg, a top aide to the left-wing Democratic senator from California, Alan Cranston. The post Steinberg is being considered for is a coveted 15-year appointment to a court that will oversee veterans' claims.

It is undisputed that Steinberg is one of the most effective, and feared, staff aides on Capitol Hill. One major magazine even went so far as to dub the Cranston/Steinberg combination as "Senator Cranberg" to denote how much power Steinberg wields in the name of the senator who employs him.

Capitol Hill assistants today are far more powerful than they were back when congressional staffs were small and the members did most of the legislative work themselves.

> Nowadays, unelected aides make many of the policy decisions for their bosses and draft much of the legislation that is introduced and ultimately enacted by Congress. Jonathan Steinberg is a superstar among this new breed of anonymous Hill staffers who pull a lot of the strings in Washington.

In a study of the influence of these unelected congressional aides—a report which prominently featured Steinberg—the American Enterprise Institute pointed out that the entrenched, permanent bureaucracy of the executive branch of government works hand-in-hand with a like-minded bureaucracy on Capitol Hill to run the government no matter whom the people elect as President of the United States.

One technique employed by this crowd is to use the congressional committees to micro-manage various federal agencies and departments. Another favorite tactic is to make life miserable for presidential appointees who dare to challenge the power of the permanent bureaucracy, which is accustomed to seeing political appointees come and go without making much of a difference in the way a department is run.

One way to do this is to block Senate approval of presidential nominations. Under our system of separation of powers, presidential appointees have to be confirmed by the U.S. Senate. Historically, this senatorial approval of presidential appointments tended to be a mere formality with very few nominees being rejected by the Senate.

All of this changed with the election of Ronald Reagan to the presidency in 1980. Left-wing congressional staffers launched a major effort to defeat conservative appointees to various posts in the Reagan Administration.

The first scalp in this new brand of executive legislative conflict was Ernest Lefever, who was nominated by Reagan to be the Assistant Secretary for Human Rights in the Department of State. Cranston/Steinberg led the fight against Lefever before the Senate Foreign Relations Committee, and the Lefever nomination was derailed.

I had my own run-in with Jonathan Steinberg when he was trying to defeat my nomination to be director of ACTION in the Reagan Administration, and I must acknowledge that he is one effective opponent. I happened to win that particular battle, but Steinberg evened the score by getting legislation passed removing the Peace Corps from being under the ACTION agency.

(Our confrontation was chronicled in an article by James Fallows in the *Atlantic Monthly* entitled "The Vietnam Generation." Fallows' conclusion was that there was as yet no reconciliation between the two opposing factions of the Vietnam generation: Vietnam veterans like myself and anti-Vietnam activists such as Steinberg.)

After four years in Washington, I came to a grudging admiration for Steinberg's abilities. To me, he was the most effective New Left operative I had run into since the heyday of Tom Hayden in the 1960s. So, in a way, I can appreciate the frustration that must be felt by Capitol Hill Republicans who have to deal with Jonathan Steinberg on a daily basis. But that is no excuse or justification for honoring and rewarding this man by giving him what effectively is a lifetime appointment as a judge on the Veterans Court.

My fellow Vietnam veteran, Barry Caron, who was wounded in combat during that war, said it best in a recent letter to the White House on the Steinberg appointment:

"The bottom line is that Jonathan Steinberg is *no friend* of the veteran. His appointment to the Court of Veterans Appeals would send the wrong message to the veterans community and to all those loyal Reagan-Bush Republicans who have unsuccessfully sought a position with the Administration. And finally, this new court should not be a garbage dump for the Senate to use to rid itself of unwanted refuse.

"I appeal to you to make every effort to prevent this travesty from taking place."

[From The Star and Stripes, Oct. 9, 1989]

OPPOSES STEINBERG

According to recent reports pertaining to appointments under the guidance of the newly formed VA System, intention is voiced to select Jonathan Steinberg to be a judge. His tenure would be for a period of 15 years, with a salary of $89,500 per year.

If this is accomplished, it is proof positive the newly formed VA system is to be a dumping ground of unwanted scum and riffraff. This would-be appointee to a judgeship has none of the necessary attributes required to perform the job.

The outright attempt to initiate a move such as this reminds me of my days in the Philippines as a prisoner of war in the Cabanatuan Camp and being forced by the Japanese to work on the anthill detail. The Japanese usually picked Americans without shoes or shirts. The anthills were four or five feet in height and approximately 12 feet across. We used picks and shovels to destroy the hills while the Japanese laughed at our jumping around while literally covered by biting ants; we soon learned there was at least one cobra nest in each hill. We were given a cigarette for each cobra; meager remuneration with no medicine for ant bites.

A judge should be an upstanding individual and beyond reproach. Skeletons in the closet or cobra nest must be ruled out by the do gooders and favorites; more emphasis must be placed on qualifications.

Please exert your influence to stop this appointment.—James W. Hurlbut, West Plains, MO.

[From The Star and Stripes, Oct. 30, 1989]

DUMP STEINBERG SOMEPLACE ELSE

(By Henry Lawhorn)

Is Jonathan Steinberg—a non-veteran and anti-Vietnam War activist—the best choice to sit as a judge on the Court of Veterans Appeals?

As chief counsel and majority staff director for the Senate Veterans' Affairs Committee, Steinberg has for many years been Sen. Alan Cranston's (D-CA) key researcher and muckraker. Most serious to veterans, it seems pretty obvious that Steinberg was instrumental in delaying consideration of several nominees to key positions in the Department of Veterans' Affairs.

Take, for example, the recent attacks on Republican nominees Edward Derwinski and Donald Gregg. These attacks were characterized by strong personal assaults on the nominees during which press stories questioning the nominees' credibility, personal integrity and patriotism were planted with liberal reporters)—primarily in West Coast newspapers. Is it a coincidence that the newspaper which first broke the story of Derwinski's association with fascist sympathizers—a story which turned out to have almost no substance whatsoever—was broken by a newspaper in Cranston's home state? Once published, these attacks were converted into intense personal questioning by Cranston during confirmation hearings.

The gripe is that many qualified Republicans and conservative Democrats are being turned away by the White House because they did not participate in the Bush campaign. Meanwhile, Jonathan Steinberg—who actively supported Bush's opponent Michael Dukakis—is being offered a lucrative position: a 15-year term with a salary of $89,500 a year. A real political plum with a lifetime of perks.

Why is the White House considering him for this position? Because Steinberg—an unelected represenative—is one of the most powerful men on Capitol Hill. He uses Cranston's power and his own legislative savvy to manipulate veterans' affairs as he sees fit. So the conservatives (and likely a good number of liberals) want him out.

While applauding the idea of getting rid of Steinberg, any veteran has got to be horrified at the method. The bottom line is that Steinberg is no friend of the veteran. Steinberg's appointment to the court would send the wrong message to the veterans' community and to all those loyal Reagan-Bush Republicans who have unsuccessfully sought a position with the Administration. The Court of Veterans Appeals is supposed to be the veterans' protection against VA abuses. It should not become a garbage dump for the Hill to rid itself of unwanted refuse.

I have received more than 60 letters so far concerning this nomination. Judicial review is a joke any way to you look at it. Steinberg's nomination can only make things worse. Veterans: pick up your phones and call your senators and congressmen. They can't block it if they don't know how yhou feel.

[From The Washington Post]

AN $89,500 MOVE UP AND OUT?

(By Bill McAllister)

When the history of the Bush Administration's appointments is written, Jonathan R. Steinberg probably will have earned a special niche: He may be one of the few Democrats to win a job by being someone a lot of Repubicans hate.

Congressional and Administration sources say that Steinberg, a lawyer and aide to Sen. Alan Cranston (D-Calif.), is on the verge of being appointed to a 15-year term on the newly created Court of Veterans Appeals. It is a highly sought-after $89,500-a-year position that officials say Steinberg is about to gain largely because many Republicans want him off Capitol Hill.

As staff director of the Senate Veterans' Affairs Committee, Steinberg has proved to be a constant nemesis to officials in the Department of Veterans Affairs. In his 20 years as a Cranston aide, Steinberg has earned a reputation as one of the Senate's most influential staffers, often running the committee with such bluntness that veterans lobbyists call him "Senator Cranberg."

Soon that may be no more. Officals say White House aides recently told Steinberg to complete the forms necessary to begin a background check by the Federal Bureau of Investigation in anticipation of his appointment to the court.

Officials at the Department of Veterans Affairs say Steinberg's prospective appointment has been one of the most contested issues in the agency. Some of Steinberg's detractors argued for the appointment, saying it would remove a major adversary in Congress. Others argued just as strongly that it unfairly would reward Steinberg's years of needling the agency.

Although he is not a veteran, Steinberg, 50, has played a major role in the formation of veterans legislation. A clerk to former chief justice Warren E. Burger (when Burger was an appeals court judge here), Steinberg is a former Peace Corps executive who has aggressively pushed for expanded veterans benefits.

He is expected to fill one of three Democratic seats on the seven-member court that is to become operational in September. Edward P. Scott, general counsel to the Senate Veterans' Affairs Committee and a former Air Force legal officer, is expected to succeed Steinberg as staff director.

Three of the court's other seats are expected to go to Kenneth B. Kramer, assistant secretary of the Army for financial management during the Reagan Administration and a former Colorado congressman; Hart Mankin, a Philadelphia attorney and a friend of President Bush; and John J. Farley III, a disabled Vietnam veteran and director of a section that defends suits against federal employees in the Justice Department's Civil Division.

[redacted]

June 14, 1990

The Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
SR-414 Russell Senate Office Building
Washington, D.C. 20510-6375

Dear Mr. Chairman:

This is in response to a request from a member of your staff for the Selective Service records for Mr. Jonathan R. Steinberg.

Enclosed is a copy of his Classification Record which is the only record we have been able to locate. The requirements for Classification 3-A in 1964 are contained in 32 CFR 1622.30, a copy is enclosed.

Please advise if I can be of further assistance.

Sincerely,

Samuel K. Lessey Jr.
Samuel K. Lessey Jr.

Enclosures (2)

SELECTIVE SERVICE SYSTEM
CLASSIFICATION RECORD

LOCAL BOARD NO. 130
DELRY BUILDING
3701 N. BROAD STREET
PHILADELPHIA, PA. 19140
LOCAL BOARD STAMP

YEAR OF BIRTH _____
S. S. NUMBERS FROM _____
SHEET NO. _____

ENTER DATES NUMERICALLY BY MONTH, DAY AND YEAR

1 SERIAL NO.	2 ORDER NO.	3 NAME OF REGISTRANT	4 CLASSIFICATION		5 CLASSIFICATION AND DATE OF MAILING NOTICE																					6	7	8	9 REMARKS
1	1																												
2	2																												
3	3																												
4	4																												
5	5																												
6	6																												

Destroyed under the authority of Selective Service Regulations and Procedure Bulletin No. 99-111 [illegible]

[illegible] under the authority [illegible]

/s/ [illegible]

182

[32 CFR 1622.30]

CLASS III

§ 1622.30 Class III–A: Registrant with a child or children and registrant deferred by reason of extreme hardship to dependents.

(a) In Class III–A shall be placed any registrant who has a child or children with whom he maintains a bona fide family relationship in their home and who is not a physician, dentist, or veterinarian.

(b) In Class III–A shall be placed any registrant whose induction into the armed forces would result in extreme hardship (1) to his wife, divorced wife, child, parent, grandparent, brother, or sister who is dependent upon him for support, or (2) to a person under 18 years of age or a person of any age who is physically or mentally handicapped whose support the registrant has assumed in good faith: *Provided*, That a person shall be considered to be a dependent of a registrant under this paragraph only when such person is either a citizen of the United States or lives in the United States, its Territories, or possessions.

(c) (1) The term "child" as used in this section shall include a legitimate or an illegitimate child from the date of its conception, a child legally adopted, a stepchild, a foster child, and a person who is supported in good faith by the registrant in a relationship similar to that of parent and child but shall not include any person 18 years of age or over unless he is physically or mentally handicapped.

(2) As used in this section, the term "physician" means a registrant who has received from a school, college, university, or similar institution of learning the degree of doctor of medicine or the degree of bachelor of medicine, the term "dentist" means a registrant who has likewise received the degree of doctor of dental surgery or the degrees of doctor of dental medicine, and the term "veterinarian" means a registrant who has likewise received the degree of doctor of veterinary surgery or the degree of doctor of veterinary medicine.

(3) No registrant shall be placed in Class III–A under paragraph (a) of this section because he has a child which is not yet born unless prior to the time the local board mails him an order to report for induction which is not subsequently cancelled there is filed with the local board the certificate of a licensed physician stating that the child has been conceived, the probable date of its delivery, and the evidence upon which his positive diagnosis of pregnancy is based.

(d) In the consideration of a dependency claim, any payments of allowances which are payable by the United States to the dependents of persons serving in the Armed Forces of the United States shall be taken into consideration, but the fact that such payments of allowances are payable shall not be deemed conclusively to remove the grounds for deferment when the dependency is based upon financial considerations and shall not be deemed to remove the grounds for deferment when the dependency is based upon other than financial considerations and cannot be eliminated by financial assistance to the dependents.

October 6, 1964

Local Board No. 126
Room 318 Beury Building
3701 N. Broad Street
Philadelphia 40, Pennsylvania

Re: Jonathan Robert Steinberg; No. 36-126-39-2

Dear Sirs:

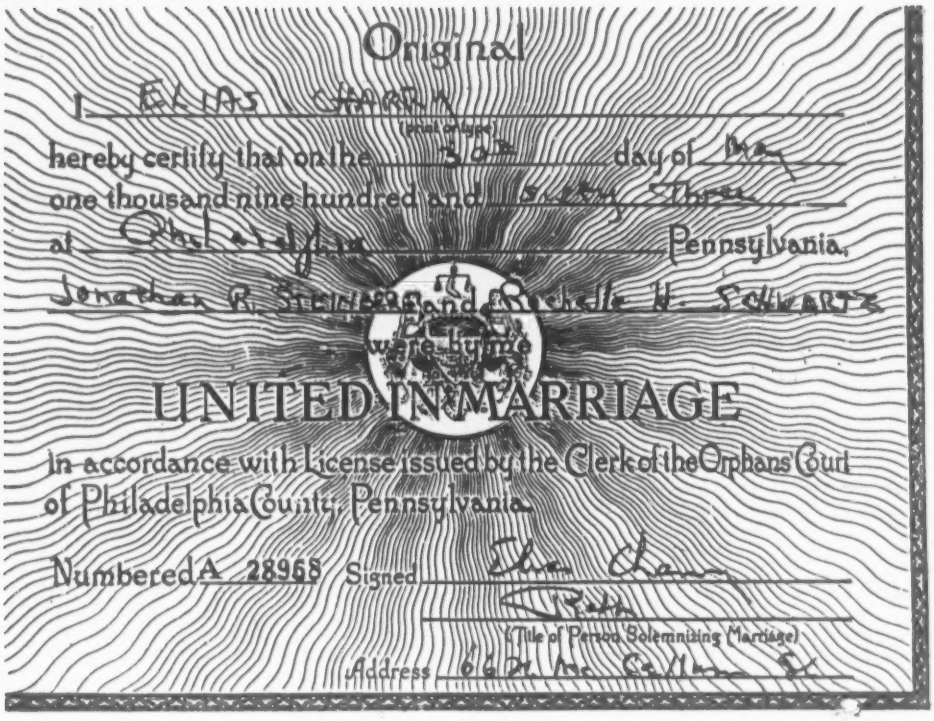
On August 5, 1963, I was classified "2-A until Sept. 1964." I am currently living in Silver Spring, Maryland, and have changed my legal voting residence from 655 West Ellet Street, Philadelphia 19, Pennsylvania, to 9268 Piney Branch Road #202, Silver Spring, Maryland. However, I do not wish to change my draft board.

I believe that my 2-A classification was based on my serving as law clerk to Honorable Warren E. Burger, U. S. Circuit Judge, from September 1963 to September 1964. I am now employed in the Office of the General Counsel, Peace Corps, 806 Connecticut Avenue, N.W., Washington, D.C., 20525. I was married on May 30, 1963, and a son was born to my wife and me on July 21, 1964.

I hope that the above information affords an adequate basis for Selective Service reclassification.

Very truly yours,

Jonathan R. Steinberg



Original

I, ELMER A. MORRIS
(Print or type)
hereby certify that on the 30th day of May
one thousand nine hundred and Seventy Three
at Philadelphia Pennsylvania,
Jonathan R. Stein and Richelle H. Schwartz
were duly
UNITED IN MARRIAGE
In accordance with License issued by the Clerk of the Orphans Court
of Philadelphia County, Pennsylvania.

Numbered A 28968 Signed Elmer A. Morris
Rabbi
(Title of Person Solemnizing Marriage)
Address 6 a Pl. Inc. Ca. Mon. Sq.

DEPARTMENT OF PUBLIC HEALTH, D.C.
VITAL STATISTICS SECTION

DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC HEALTH
CERTIFICATE OF LIVE BIRTH

1964 AUG 7 AM 9 05

BIRTH NO. 64 18459

I. PLACE OF BIRTH

Washington, D. C.

Name of Hospital or Institution (If not in Hospital, give street address): George Washington University Hospital

2. USUAL RESIDENCE OF MOTHER (Where does mother live?)

a. State: Maryland
b. County: Montgomery
c. City, Town, or Location: Silver Spring
d. Street Address: 9268 Piney Branch Road
e. Is Residence Inside City Limits? Yes ☒ No ☐
f. Is Residence on a Farm? Yes ☐ No ☒

CHILD

3. CHILD'S NAME (Type or Print): (First) Andrew (Middle) Joshua (Last) Steinberg
4. SEX: Male ☒ Female ☐
4a. THIS BIRTH: Single ☒ Twin ☐ Triplet ☐
4b. IF TWIN OR TRIPLET (This child born): 1st ☐ 2nd ☐ 3rd ☐
5. DATE OF BIRTH (Month) July (Day) 21 (Year) 1964

FATHER OF CHILD

7. NAME: (First) Jonathan (Middle) Robert (Last) Steinberg
8. COLOR OR RACE: White
9. AGE (At time of this birth): 25 YEARS
10. BIRTHPLACE (State or foreign country): Pa.
11a. USUAL OCCUPATION: Attorney
11b. KIND OF BUSINESS OR INDUSTRY: U.S. Court of Appeals

MOTHER OF CHILD

13. MAIDEN NAME: (First) Rochelle (Middle) Helene (Last) Schwartz
12. COLOR OR RACE: White
14. AGE (At time of this birth): 25 YEARS
15. BIRTHPLACE (State or foreign country): Pa.
16. CHILDREN PREVIOUSLY BORN TO THIS MOTHER (Do NOT include this child)
a. How many OTHER children are now living? 0
b. How many OTHER children were born alive but are now dead? 0
c. How many children were stillborn (born dead after 20 weeks pregnancy)? 0
17. INFORMANT (Full name): Mrs. Rochelle Steinberg — Parent ☒ Other ☐

I hereby certify that this child was born alive on the date stated above at the hour of 1:03 PM

NAME: Mrs. Jonathan Steinberg
ADDRESS: 9268 Piney Branch Road
CITY: Silver Spring
P. O. Zone:
STATE: Maryland

18. SIGNATURE: [signature] M.D.
19. ADDRESS: 1732 Eye St NW
20. DATE SIGNED: 8-4-64

40,000 4/63

AUG 25 1964

Provided it bears the IMPRESSED SEAL of the District of Columbia Department of Public Health, and shows no evidence of erasures or alterations, it is certified that the above is a true and correct reproduction of the original certificate filed on Aug 7 1964 in the Vital Statistics Section of that Department.

[signature]
Pietro Giancoli
Chief, Vital Statistics Section

SELECTIVE SERVICE SYSTEM

LOCAL BOARD NO. 126
BEURY BUILDING
3701 N. BROAD STREET
PHILADELPHIA, PA. 19140
(LOCAL BOARD STAMP)

IN REPLY, REFER TO:

22 October 1964

36-126-39-2

Mr. Jonathan R. Steinberg
9268 Piney Branch Road # 202
Silver Spring, Maryland

Dear Sir:

We are returning your certificates, copies have been placed in your records.

You will be considered for reclassification and advised accordingly.

For the Local Board

(Mrs) Marie E. Jones, Clerk
Local Board No. 126

enclosures
marriage certifiate
child's birth certificate

PREPARED STATEMENT OF HON. EDWARD J. DERWINSKI, SECRETARY, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and members of the Committee, I deeply appreciate this opportunity to testify in support of the nominations made by the President of the United States for associate judgeships on the U.S. Court of Veterans Appeals. Donald Ivers and Jonathan Steinberg are both eminently qualified to sit on the new Court, and both would contribute greatly to its important deliberations.

I have had the pleasure of working closely with Don Ivers since coming to the Department of Veterans Affairs. Don is a consummate professional whose advice I freely sought and always respected. A Vietnam veteran himself, he served in the Army from 1963 to 1968, and is today a lieutenant colonel in the Army Reserve.

I can assure you Don Ivers will bring to the Court a broad knowledge of the law. He is an incisive, articulate, and savvy attorney—just the sort I would want judging my case were I ever to have one before the new Court.

Let me add here my opinion that his past association with the Department would in no way predispose him to rule in the Department's favor. Anyone who thinks otherwise simply does not know Don Ivers—a fiercely independent thinker and a man of unquestioned integrity.

He is knowledgeable about the VA claims process, certainly, and he knows of its inherent limitations and the manner in which it is supposed to function. He is better qualified to sit in judgment of these matters because of this knowledge.

Simply put, Jon Steinberg is one of the principal authors of title 38 as we know it today. There are few, if any, who have a deeper understanding of the authorizing statutes and purposes of our benefits programs. His judicial responsibilities would not, in my view, conflict in any way with the excellent work he has done for this Committee. As with Mr. Ivers, the Court would benefit greatly from the experience he would bring to it.

In the 17 months of our professional association, I have never for a moment questioned his commitment to ensuring that veterans receive the measure of gratitude this Nation owes them.

Jon's formidable intellect and keen analytical skills suit him well to the bench. His clerkship for then DC Circuit Court Judge Warren Burger was doubtless good tutelage in appellate law and processes.

Jon Steinberg understands well the intent of Congress, and by virtue of his long years of experience in legislative matters he is superbly equipped to become a vital and integral part of the judicial process. I am confident he will be a credit to the Veterans' Court.

Mr. Chairman, the nominees who come before you today are learned and accomplished public servants with much yet to offer in our country's service. Your Committee will do well to recommend their speedy confirmation by the full Senate.

PREPARED STATEMENT OF MAX CLELAND, FORMER ADMINISTRATOR OF VETERANS' AFFAIRS, VETERANS' ADMINISTRATION

Mr. Chairman and members of the Committee on Veterans' Affairs, I am Max Cleland, Secretary of State of Georgia, and former head of the Veterans' Administration under President Carter. Prior to my service in the Carter Administration, I was on the staff of the Senate Committee on Veterans' Affairs. Before my tour of duty in Washington, I served as a State senator in the State of Georgia chairing a State Commission on Vietnam Veterans for then Governor Jimmy Carter.

I first met Jon Steinberg in December of 1969 when, as an aide to Senator Alan Cranston, he was preparing for hearings on this Committee's oversight of the Veterans' Administration's handling of the problems of treatment received by wounded veterans from Vietnam. From that time until now, I have never met a more competent, more dedicated, more able and talented person in the area of veterans affairs than Jon Steinberg. Having worked closely with Jon from 1969–1981 on all aspects of veterans affairs, I can truthfully say that he possesses incredible knowledge and a wealth of personal skills and information.

For more than 20 years, he has exemplified to me the finest levels of staff work—preparing his Senator and ultimately members of this Committee with the broadest scope and the most intricate detail of veteran-related issues facing this country. Jon worked long and tedious hours. He led others by personal example. Based on my experiences and firsthand knowledge of the problems of veterans care in this Nation—there is not a man I would rather see appointed Associate Judge of the Court of Veterans Appeals than Jon Steinberg. He has incredible personal integrity and unswerving character. Jon Steinberg typifies the best American Government

has to offer to our Nation's veterans, and he has my wholehearted admiration and support for this position. He is worthy of trust by the highest officials of the United States. I'm pleased the President has nominated him.

PREPARED STATEMENT OF CHARLES T. HAGEL, FORMER DEPUTY ADMINISTRATOR OF VETERANS' AFFAIRS, VETERANS' ADMINISTRATION

Mr. Chairman and Committee members, good morning. My name is Chuck Hagel. I am currently Deputy Director of the 1990 Economic Summit of Industrialized Nations to be held in Houston, Texas July 9 through 11.

I served in Vietnam in 1968 as an infantry squad leader. In 1981, I was nominated by President Reagan to be Deputy Administrator of the Veterans' Administration. I appeared before this Committee and was confirmed by the U.S. Senate. I resigned that position in 1982. Over the last few years, at the request of Federal Judge Jack B. Weinstein, I have served without compensation as Chairman of the $180 million (out-of-court settlement) Agent Orange Payment Program.

It was during my tenure as Deputy Administrator of the Veterans' Administration when I first became acquainted with Jon Steinberg. I worked very closely with Jon and his staff during the time he served as Minority Chief Counsel and Staff Director to the Senate Committee on Veterans' Affairs. My dealings with him were direct and often. He was always truthful with a thoughtful opinion, but did not always agree with the Reagan Administration or me. I could count on an experienced, open and insightful dialog with him on the many difficult and sensitive issues we dealt with. In my opinion, Jon's influence on veterans issues was very positive for both the issues and individual veterans.

It is my opinion that Jonathan R. Steinberg is eminently qualified to be considered as an Associate Judge on the U.S. Court of Veterans Appeals. His temperament, judgment, experience and long dedication to veterans issues make him an excellent choice for this Court. I would encourage the Committee's consideration of Jon for a position on the Court of Veterans Appeals. I believe he would bring great credit and a broad judicial reach to the many important issues that the Court will negotiate over the years.

Thank you for an opportunity to express my strong and positive views on Jon Steinberg. I would be happy to answer any questions the Committee may have.

PREPARED STATEMENT OF THOMAS E. HARVEY, FORMER DEPUTY ADMINISTRATOR OF VETERANS' AFFAIRS, VETERANS' ADMINISTRATION

Mr. Chairman and members of the Committee, I am pleased to have the opportunity to appear before you today at the confirmation hearing for my friend, Jonathan Steinberg, who has been nominated by the President to be a Judge on the Court of Veterans Appeals.

My name is Tom Harvey. For a bit more than 2 years, during the period 1981 through the end of 1983, I served as Chief Counsel and Staff Director of this Committee under the chairmanship of Senator Alan K. Simpson. During that period, Jon was Minority Chief Counsel and Staff Director, having served as Staff Director for several years prior to the change of leadership in the U.S. Senate in the 1980 elections.

Jon is as bright and able a congressional staff member as I worked with during my time on the Committee, and, indeed as I have worked with since in a number of different positions where I have had occasion to deal with the Hill and the congressional process.

He is a man with whom I often differed philosophically, yet, Senator Cranston, you could have had no more effective an advocate for positions you and the then minority of the Committee espoused.

Jon is truly a worthy adversary. He is intellectually tough. He has a marvelous grasp of the congressional process. He uses the procedural rules of the Senate to his advantage at every turn.

Because of his tenure on the Committee staff, he and his staff had a tremendous advantage that I did not enjoy. They had been around when much of the legislation relating to veterans' benefits was enacted. They had worked with legislative counsel to draft the legislation, they drafted the explanatory floor statements, and they drafted the report language accompanying and interpreting the legislation.

I can assure you that it was a challenge to effectively represent my own chairman with the deck so stacked against me. Yet I like to think I was effective in my own right. I had one thing going for me. Chairman Simpson, too, believed deeply in the

enactment of legislation which would assure a range of benefits to veterans granted to them by a grateful Nation. Benefits which addressed acknowledged needs of veterans and facilitated their readjustment into civilian life.

He was interested in making sure that those benefits were administered in an effective and efficient fashion. Chairman Simpson was as concerned about the appearance of waste, fraud or abuse in veterans' programs then as he is today, and I knew that, as Ranking Minority Member, Senator Cranston and his staff shared those concerns.

In effect then, although Jon and I often disagreed with regard to specific approaches to issues we shared a common commitment: a commitment instilled in us by our principals, the Chairman and Ranking Minority Member of the Committee, a commitment to work toward the creation of the best possible, most effective program of veterans' benefits and services, and to assist the Committee in its oversight of those.

Mr. Chairman, I am proud of the work I did with the Committee. I believe that I was challenged to do that better by working with Jon Steinberg. I know that, if confirmed, he will provide the same sort of intellectual challenge to his fellow judges on the Court of Veterans Appeals, and I believe that they too will one day say, as I do, that they have better carried out their charge because he was one of them.

PREPARED STATEMENT OF DR. DONALD L. CUSTIS, FORMER CHIEF MEDICAL DIRECTOR, VETERANS' ADMINISTRATION

Mr. Chairman, I appreciate the opportunity to appear before your Committee and supply this testimony in support of Jonathan Steinberg's nomination to serve as an Associate Judge on the newly established U.S. Court of Veterans Appeals.

I have known Jonathan and worked closely with him for over the past 10 years starting with the time of my service as Chief Medical Director of the Veterans' Administration. I know him to be a brilliant, innovative and scholarly counselor.

He is a sensitive, genuinely caring individual who's personal integrity is of the highest order. I can easily imagine the sincere, dedicated effort he must have given to the Peace Corps early in his career.

Contrary to what was reported recently by a Washington Post columnist, Jonathan is indeed a friend and advocate of the Department of Veterans Affairs. There are few who have ever accomplished more an behalf of veterans. He has an in depth understanding of veterans' benefit programs, having himself written much of its legislative authorization.

I hold the unequivocal opinion that Jonathan Steinberg is not only superbly qualified for this appointment, but highly deserving of it.

PREPARED STATEMENT OF DR. JOHN A. GRONVALL, FORMER CHIEF MEDICAL DIRECTOR, DEPARTMENT OF VETERANS AFFAIRS

I am pleased to appear at this confirmation hearing, to provide comments regarding Mr. Jonathan R. Steinberg, who I believe is eminently qualified to serve as an Associate Judge on the newly established U.S. Court of Veterans Appeals.

My working contacts with Mr. Steinberg began in 1983 when I was appointed Deputy Chief Medical Director of the then Department of Medicine and Surgery in the Veterans' Administration. From September 1983 until January 1987, I served either as Deputy Chief Medical Director or Acting Chief Medical Director. In January 1987 I was appointed Chief Medical Director, and served in that position until April 1990, at which time I became a VA Distinguished Physician. For over 6½ years, therefore, I had frequent working contact with Mr. Steinberg in his role as Chief Counsel for the Senate Veterans' Affairs Committee. My contacts with Mr. Steinberg occurred through regular hearings held by the Committee for consideration of legislation, conduct of program oversight, and review of proposed budgets for the medical programs of VA. For each of these hearings, Mr. Steinberg, in his role as Chief Counsel, prepared numerous prehearing questions, questions to be asked during the hearing, and posthearing followup questions. Direct conversations with Mr. Steinberg regularly occurred to clarify issues and to amplify responses to such questions. In addition, regular interactions occurred with Mr. Steinberg in regard to correspondence with the Chairman of the Senate Committee on Veterans' Affairs. Beyond this, I attended periodic ad hoc meetings with Mr. Steinberg and other Committee staff members to discuss current issues. All of these contacts were supplemented by periodic phone calls from Mr. Steinberg to informally discuss various aspects of the VA's medical program.

The extent of these contacts, over a significant period of years, allows me to speak with conviction regarding the characteristics of Mr. Steinberg in relation to veterans' programs.

First and foremost, Mr. Steinberg is a dedicated veterans' advocate. The thrust of all of his activity has always been to enhance or extend the VA programs which benefit veterans, or to seek ways to improve existing veterans' programs. It has been my experience that in every instance, Mr. Steinberg's basic motivation is to support the needs of veterans.

Mr. Steinberg is an incessant worker. On every occasion of interaction with him, Mr. Steinberg's overriding preoccupation is with the activities of the VA. He relentlessly pursues his work and the work of the Senate Committee on Veterans' Affairs.

Mr. Steinberg has an intimate knowledge of the details of veterans' law and applicable regulations. The fund of knowledge regarding applicable law which he has immediately at his fingertips is truly impressive. I do not know of an instance where he was deficient in knowledge of either the or legislative history of enacted veterans legislation.

Mr. Steinberg applies his detailed knowledge of law and regulations to his responsibilities as Chief Counsel by a process of meticulous attention to detail. The questions which he prepares are both extensive and precise, requiring well-documented responses. No aspect of a VA program is so small that it escapes this scrutiny.

Mr. Steinberg then, having accumulated this extensive body of information, is relentless in his followup regarding commitments made by the VA or projections of a timetable for implementation of new programs or program expansions. He can always be counted on to regularly inquire as to the status of all previously made projections.

As perhaps Jon Steinberg's most important characteristic, I would point to his absolute integrity. This is best exemplified by his handling of sensitive information. On regular occasions, highly sensitive and confidential information was provided to the Chairman of the Senate Veterans' Affairs Committee through Mr. Steinberg. In my entire experience, I know of no instance when the absolute requirement for integrity in handling of such confidential information was breached. Although his demands for information are extensive, his integrity gave confidence to the providers of information that the materials submitted would be treated with due respect.

A major characteristic of Mr. Steinberg is his belief that the role and objective of the legislative process is to enact into law statutory provisions which will govern in detail the programmatic activities of the Department of Veterans Affairs. This approach often created tension with executive branch officials, myself included, who believed that the details of program operation should be best left to those implementing the programs. Legislative oversight would then focus on basic objectives rather than exquisite detail of program operations. Mr. Steinberg is, of course, not the only Committee staff person who approaches development of legislation in this way, but his fund of knowledge and his commitment to meticulous oversight made such tension with him particularly important. While this is a critical comment, it is essential to note that throughout all such interactions, it was very clear that Mr. Steinberg's commitment was ultimately to improve and extend programs for veterans. The tension was, therefore, not immobilizing, because it was very clear that the objective of his effort was support for the VA and support for veterans' programs. In every case it was easy to discuss such differences of approach frankly with him, and to thus maintain close and effective working relationships.

In summary, it is my judgment, based on this extensive interaction with Mr. Steinberg, that he is eminently qualified for the position as Associate Judge of the Court of Veterans Appeals. He has clearly demonstrated that he is a veterans' advocate, that he is extraordinarily knowledgeable regarding the law applicable to veterans' programs, and that he has absolute integrity. These are characteristics I would wish to see in anyone entrusted with the responsibility of service as a Federal judge.

PREPARED STATEMENT OF HARRY N. WALTERS, FORMER ADMINISTRATOR OF VETERANS' AFFAIRS, VETERANS' ADMINISTRATION

Mr. Chairman and members of the Senate Committee on Veterans' Affairs, business conflicts prevent me from appearing at your Committee hearing as you deliberate the nomination and potential confirmation of Mr. Jonathan R. Steinberg to the U.S. Court of Veterans Appeals. Although this hearing is part of our political process, I do not believe that pure partisan politics has a helpful role in dealing with veterans issues. It is in this spirit that I offer my views on the merits of Jonathan Steinberg to serve on this prestigious and important Court.

Jonathan was the staff director for Senator Cranston when I was Administrator of Veterans' Affairs from December 1982–January 1986. He and I had considerable contact during that time. I found him to be honest, respectful, and professional. He has great vitality, a keen mind and an aggressive style. I would also characterize my contacts with Mr. Steinberg to be non-confrontational, cooperative, and with a sense of fairness for our veteran constituency. I believe that he is qualified to be a member of the Court and I commend him to you for your favorable consideration.

PREPARED STATEMENT OF OLIVER E. MEADOWS, FORMER STAFF DIRECTOR, VETERANS' AFFAIRS COMMITTEE, U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman, I appreciate the opportunity to appear before your Committee and speak on behalf of the nomination of Mr. Jonathan Steinberg to be an Associate Judge on the U.S. Court of Veterans Appeals.

Mr. Chairman, I served as Staff Director of the House Veterans' Affairs Committee for twenty-five (25) years. During seven (7) of those years, Mr. Steinberg served as my counterpart in the Senate, either on the Subcommittee on Veterans' Affairs of the Senate Labor and Public Welfare Committee, or as Senator Cranston's counsel for veterans' matters. In addition, in 1977–78 I served as National Commander of the Disabled American Veterans and worked with Mr. Steinberg.

I have also served as chairman or member of five (5) commissions or advisory committees dealing with veterans' affairs and in these assignments worked closely with Mr. Steinberg.

Mr. Chairman, I think it is certainly fair to say that over the years, I have had a good opportunity to work with Mr. Steinberg, know him, and understand his contributions to veterans' programs.

would like to divide my observations into three categories as follows:

(1) Mr. Steinberg's knowledge of veterans' laws and programs,

(2) Mr. Steinberg's professional ability, and

(3) Mr. Steinberg's ethical and moral values.

Regarding Mr. Steinberg's knowledge of veterans' laws and programs, I think that, without a doubt, he has very few peers. Mr. Steinberg has participated in the development of every piece of veterans' legislation, major or minor, that has emerged from the Congress for the last twenty (20) years.

His knowledge encompasses the entire field. He has worked on five (5) major amendments that either improved or expanded veterans' education programs. He has made major efforts in the area of health care. As a matter of fact, he helped rewrite a great part of title 38 as it pertains to veterans' medical and health matters. This included such things as physicians' and nurses' pay, medical education, construction authorization, drug and alcohol treatment, expanded outpatient services, and much more.

In the field of compensation and pension, Mr. Steinberg has prepared and handled legislation involving fifteen (15) pay increases and he was the senior staff person on legislation involving Military Radiation and Agent Orange Exposure.

He helped guide through the Senate legislation that equalized wartime and peacetime compensation payments. He helped improve dependency allowance payments for service-connected disabled veterans and he guided, through the Senate the Pension Reform legislation. In addition, Mr. Steinberg has worked on major pieces of legislation in housing, veterans' employment, POWs, cemeteries, and a great deal more.

Mr. Chairman, I am seeking to emphasize the point that Mr. Steinberg has vast and intimate knowledge of the law that he will preside over as judge. As a matter of fact, he wrote a great deal of it. Not many people have had the opportunity to work in all aspects of veterans' programs and law . . . and Mr. Steinberg is one of those few.

Mr. Chairman, I said at the outset I wished to comment on Mr. Steinberg's professional ability.

I worked opposite him in the House as we dealt with dozens, perhaps hundreds, of major law changes in the field of veterans' affairs. We worked together in oversight investigations. We have spent countless hours in legislative conference and preparing reports. Based on these experiences, Mr. Chairman, here is how I characterize Mr. Steinberg:

He is very intelligent, extremely thorough and very innovative. He is one of the best and fastest legislative draftsmen I have ever seen. He does his homework and

comes prepared. I found him to be an aggressive and tough negotiator when he needed to be, but intelligent when the time came for compromise.

Mr. Chairman, in closing, I wish to volunteer my opinion as to Mr. Steinberg's ethical and moral values.

I have known Mr. Steinberg professionally and personally for a long time now. I know him to be a dedicated family man.

I have never observed the slightest suggestion of an ethical impropriety and I believe him to be completely honest. I think he has been an outstanding Federal employee and a dedicated and effective employee for the Senate. It would be hard for me to imagine a person better equipped to serve as a Judge on the new Veterans' Court. Jonathan Steinberg knows VA programs, he knows the structure of the veterans' world, but most importantly, he understands the law, the legislative process and the problems of administrating our system of veterans' benefits and services.

Jonathan Steinberg will bring a unique insight to the Court and I hope your Committee and the entire U.S. Senate will view his nomination favorably and act promptly.

PREPARED STATEMENT OF COOPER T. HOLT, FORMER EXECUTIVE DIRECTOR, VETERANS OF FOREIGN WARS OF THE UNITED STATES

My name is Cooper T. Holt and, as you know, it was my distinct honor and privilege to have served for 26 years as the Executive Director of the VFW's Washington office. You will recall that on September 1 of last year, I retired from that position; however, my retirement has in no way lessened my personal commitment to our Nation's veterans. It is in this personal capacity and with a great deal of pleasure that I return to your Committee to testify in support of Jonathan Steinberg's nomination as an Associate Judge on the U.S. Court of Veterans Appeals.

As you know, the U.S. Court of Veterans Appeals will have exclusive jurisdiction to consider all factual, legal, and constitutional questions and claims for benefits under laws administered by the Department of Veterans Affairs. Because of this, I am extremely concerned that only individuals possessed of the highest degree of legal expertise, knowledge of veterans' laws and issues, and judgment tempered by human compassion should serve as administrative judges on this newly created Court. To my mind, and I believe in the opinion of numerous others, Jonathan Steinberg is certainly such an individual.

Along with being the "dean" of Chief Counsels in the U.S. Senate, Jonathan has assumed the responsibility for the majority of the Veterans' Affairs Committee business since Chairman Alan Cranston became Whip in the 1970s. The extreme productivity in the effectiveness of this Committee bears witness in my opinion to the exemplary leadership, knowledge and judgment of Jonathan Steinberg. He is now considered to be without a doubt the foremost expert on veterans' laws and issues, and he knows more about veterans' problems as they relate to the law under Government programs than any other person in the Congress, or for that matter the Nation, today.

Mr. Chairman, Jonathan Steinberg's contributions in improving the entitlements and benefits of veterans are far too numerous to list. He has been a tireless worker in securing cost-of-living adjustments for service-connected disabled veterans and was instrumental in the comprehensive restructuring and modernization of the VA's vocational rehabilitation program to meet the special needs of disabled veterans. Veterans' education, employment, and health and hospital care have also benefited from Jonathan's expertise and compassion. Through his efforts, legislation has been drafted and passed in the Senate that would liberalize the criteria for compensating those veterans suffering from exposure to ionizing radiation and Agent Orange. Truly, Mr. Chairman, Jonathan's commitment to veterans cannot be challenged.

Fially, through having known this fine man for a good part of his almost 20 years of service in the U.S. Senate, I must say Jonathan's most qualifying virtue for a judgeship on the Court of Veterans Appeals is his exquisite knowledge, appreciation and, indeed, love of the law. I recommend Jonathan Steinberg fully and unequivocally for the position.

This concludes my statement Mr. Chairman and I will be happy to respond to any questions you may have.

PREPARED STATEMENT OF CHARLES E. JOECKEL, JR., NATIONAL ADJUTANT, DISABLED AMERICAN VETERANS

Mr. Chairman and members of the Committee, on behalf of the more than 1.3 million members of the Disabled American Veterans (DAV) and its Ladies' Auxiliary, I wish to express my appreciation for the opportunity to present testimony in connection with the President's nomination of Mr. Donald L. Ivers and Mr. Jonathan L. Steinberg to be Associate Judges on the U.S. Court of Veterans Appeals (COVA).

Mr. Chairman, the Disabled American Veterans is pleased to offer its strong support for the nomination of both Mr. Ivers and Mr. Steinberg.

Our organization has enjoyed a long, harmonious, professional relationship with both these gentlemen, one that has, we believe, proven beneficial to the best interests of our Nation's veterans. We believe Mr. Ivers and Mr. Steinberg to be eminently qualified for the positions to which they have been nominated by the President.

The background of both nominees is obviously well known to this Committee. However, for the record, I would like to take a few moments to briefly summarize their impressive credentials.

Mr. Ivers attended New Mexico Military Institute and the University of New Mexico. He earned his law degree from American University, Washington, DC, and pursued graduate legal studies at Georgetown University, Washington, DC. He is a 1982 graduate of Harvard University's Senior Managers in Government course.

He served on active duty in the U.S. Army from 1963 to 1968, with assignments in the United States, Germany and Vietnam. He is now a member of the U.S. Army Reserve and holds the rank of lieutenant colonel. His decorations include the Bronze Star, Air Medal, Army Commendation Medal and the Joint Services Achievement Medal.

From 1972 to 1978, Mr. Ivers was an attorney with the firm of Brault, Graham, Scott and Brault in Washington, DC. In 1980, Mr. Ivers served as the Chief Counsel for the Republican National Committee and was active in that year's presidential campaign. In 1981, he received an appointment with the Department of Transportation, serving as Counselor to the Secretary of Transportation and Chairman of the Secretary's Safety Review Task Force. He was also Chief Counsel of the Federal Highway Administration.

In 1985, Mr. Ivers was appointed as General Counsel of the then Veterans' Administration. In this capacity, he directed a nationwide legal staff of some 650 individuals, including over 320 attorneys. As Chief Legal Officer for the VA, he was responsible for providing legal advice and services to the agency and to its nationwide staff of over 240,000 employees.

Mr. Steinberg, a native of Philadelphia, PA, graduated from Cornell University in 1960 and received his law degree, cum laude, Order of the Coif, from the University of Pennsylvania Law School in 1963.

After clerking for Judge Warren Berger, then on the U.S. Court of Appeals for the DC Circuit, Mr. Steinberg joined the legal staff of the Peace Corps, eventually serving as Deputy General Counsel. In March 1969, he became Committee Counsel to Senator Alan Cranston with special responsibility in the area of human resources. He served as Counsel on the Labor and Public Welfare Committee's Subcommittees on Veterans Affairs, Railroad Retirement and Human Resources. He was also responsible for Senator Cranston's work as chairman of the Health and Hospital Subcommittee of the Veterans' Affairs Committee from 1971 to 1977, and he monitored Senator Cranston's work on the Senate Budget Committee from 1974 to 1978.

In January 1977, Mr. Steinberg became Chief Counsel and Staff Director of the Veterans' Affairs Committee and continued as such until 1981, when his position was Minority Chief Counsel and Staff Director through the 99th Congress. Following that Congress, Mr. Steinberg again resumed the responsibilities of Chief Counsel and Staff Director for the Veterans' Affairs Committee.

As Chief Counsel and Staff Director of this most important Committee, Mr. Steinberg had overall responsibility for supervising the Committee staff, budget agenda and management. He also had valuable responsibilities and relationships with other Senate committees, Senate offices and the general public. He also remained a senior advisor to Senator Cranston with regard to human resources issues, the congressional budget and a variety of legislative, security and legal matters.

Mr. Chairman, in view of the impressive credentials of the nominees, there can be no doubt as to their qualifications to serve on the U.S. Court of Veterans Appeals.

As General Counsel, Mr. Ivers was eminently involved at the highest policy making levels of the Veterans' Administration. Responsible for providing legal advice, services and opinions relating to all VA programs, he has amassed a thor-

ough knowledge and special insight concerning the Administration and delivery of benefits to veterans and their families that will be of immeasurable value to the Court of Veterans Appeals.

Mr. Steinberg will bring an equally significant contribution to veterans' judicial proceedings. For over 20 years he has played a major role in the crafting of legislation affecting literally every single VA benefit and service. Few people, if any, can match his degree of familiarity with title 38, United States Code and its underlying perspective of legislative intent. Quite frankly, in the opinion of the DAV, Mr. Steinberg's wealth of knowledge and experience in all matters relating to veterans' affairs—personified as it is in a man of unquestioned ability—virtually dictates his presence on the Court of Veterans Appeals.

In summation, Mr. Chairman, we find both Mr. Ivers and Mr. Steinberg to be men of honesty, integrity, and high moral character; skilled attorneys in their chosen fields of endeavor; and immensely qualified to participate in judicial deliberations relating to the benefits of our Nation's veterans.

Therefore, I am most pleased, as National Adjutant of the Disabled American Veterans, to urge this Committee to act favorably and with all deliberate speed on their nominations for appointment as Associate Judges of the U.S. Court of Veterans Appeals.

Again, I do thank the Committee for extending me the opportunity to testify during these most important proceedings.

PREPARED STATEMENT OF R. JACK POWELL, EXECUTIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. Chairman and members of the Committee, on behalf of the members of Paralyzed Veterans of America (PVA), it is a privilege to appear before you today to give our endorsement to the President's nomination of Jonathan R. Steinberg to be an Associate Judge on the U.S. Court of Veterans Appeals.

Paralyzed Veterans of America strongly supported enactment of legislation which would provide our Nation's veterans the opportunity for judicial review of adverse VA determinations. In doing so, we knew that merely passing a law would not, in itself, guarantee the full protections under the law that we sought. The effectiveness or failure of the new law would hinge on the proper implementation of judicial review from the start, through the establishment of proper rules of operation for the new Court of Veterans Appeals. Of even more importance, would be the selection, nomination and confirmation of judges of the highest quality who, in rendering their decisions early on, would lead, nurture and influence Court operations for years to come.

In this instance, with the nomination of Jonathan Steinberg, President Bush has fully met our expectations in selecting an individual of high character, broad legal ability, thorough knowledge of veterans' benefits and services, and deep concern for those who have served in defense of this Nation.

Following receipt of his law degree from the University of Pennsylvania in 1960, Mr. Steinberg began his legal profession in appellate review serving as clerk for Judge Warren Berger, then on the U.S. Court of Appeals for the DC Circuit. After serving with the Peace Corps' legal staff, and, eventually, as its Deputy General Counsel, in 1969 he became Committee Counsel to Senator Alan Cranston on the Senate Committee on Labor and Public Welfare which had jurisdiction over all veterans' benefits and services. After the creation of the Senate Committee on Veterans' Affairs, Mr. Steinberg became the Committee's Chief Counsel in 1977 and has served in that position to the present time.

Mr. Chairman, over 20 years of service on the staff of the U.S. Senate is a remarkable accomplishment in longevity in itself. More important than just the number of years are the accomplishments that have come from those years of hard work, dedication and commitment. Millions of veterans have benefited from the legislative process that Mr. Steinberg has helped direct during this time. His service spans the period of time while the Congress struggled to meet the needs of returning veterans from the Vietnam war, the growing demands on VA systems from an aging World War I, World War II and Korean war veteran population, and the requirements of young men and women serving in today's All-Volunteer Armed Forces. In each of these instances, in managing the Committee's day-to-day operations, Mr. Steinberg has exhibited a persistent drive for consistency in interpreting the law, a compelling desire for fairness, and a determined, if not tenacious, intention to stand on principle.

Mr. Chairman, PVA could not ask for better qualities for an individual to serve as an Associate Judge on the Court of Veterans Appeals. On behalf of the members of Paralyzed Veterans of America, all of whom are veterans who have incurred spinal cord injury or dysfunction, I call on this Committee and the U.S. Senate to approve Mr. Steinberg's nomination by unanimous vote.

PREPARED STATEMENT OF WILLIAM JOSEPHSON, FORMER GENERAL COUNSEL, PEACE CORPS

Mr. Chairman, thank you for this opportunity to support Senate confirmation of President Bush's nomination of Jonathan R. Steinberg to be an Associate Judge on the new U.S. Court of Veterans Appeals.

I was general counsel of the Peace Corps in 1964 when Jon came to work in our office. He had a distinguished record at the University of Pennsylvania Law School and had clerked for Warren Burger when Chief Justice Burger was a judge on the U.S. Court of Appeals for the District of Columbia Circuit.

My experience with Jon over the several years that we worked together can be summed up with the word "superlative." He was extraordinarily painstaking in his attention to sound and careful analysis. He was a powerful advocate of his own carefully marshalled opinions. The only trait of Jon's that I could consider faulting was that he was so tireless that he almost wore me out.

The many Senators and Senate staff who have worked with Jon during the more than 20 years he has worked with the distinguished Chairman of this Committee, I am sure, know exactly what I am talking about. They can testify better than I as to the quality of his professional work for the Senate. My observation is that he has fulfilled the promise of his service in the Peace Corps.

During the many years that I have known Jon, I have also gotten to know his wife and children. Everything I know about his personal life also qualifies him for judicial office.

I would like to conclude my testimony by expressing my puzzlement at a July 30, 1989, Dallas Times Herald column which characterized or impliedly characterized Jon as an "anti-Vietnam [sic] activist." I suppose that the writer means anti-Vietnam war activist.

I know of no basis for so characterizing Jon. Jon and I worked together intensely at the Peace Corps in 1964, 1965 and 1966 until I left to return to private law practice in the middle of that year. The Peace Corps, then, as it does now, strove to be bipartisan and nonpolitical in its approach to foreign policy issues. As you well know, volunteers were instructed not to express publicly positions on political issues in the countries in which they were serving. Peace Corps volunteers and staff were instructed to adhere to Dean Rusk's admonition not to make the Peace Corps an instrument of foreign policy.

Scrupulous in all things, this would have been the kind of instruction Jon Steinberg would have followed to the letter. I know of no basis whatsoever for the charge that Jon was an anti-Vietnam war activist.

The writer of the story, former ACTION director, Tom Pauken, is not correct or fair in describing the reasons for the decision of the Senate, the House and President Reagan to remove the Peace Corps from ACTION and restore it to independent status. The reasons were thoroughly principled. First was revitalization of the Peace Corps by restoring its independent status. Second was the judgment that the Peace Corps, which was then part of ACTION, should not be directed by a forner intelligence officer, which Mr. Pauken was. The second reason was squarely in line with the longstanding U.S. Government policies that divorce the Peace Corps from any U.S. intelligence activities or associations. Mr. Pauken would have been disqualified for Peace Corps volunteer or staff service under those policies.

Thank you again for the opportunity to appear. It is a particular pleasure for me to have this chance to respectfully recommend that the Committee report favorably to the Senate the nomination of my friend and colleague, Jonathan A. Steinberg, an Associate Judge of the U.S. Court of Veterans Appeals.

PREPARED STATEMENT OF SIDNEY COOPER, NATIONAL LEGISLATIVE DIRECTOR, VETERANS DUE PROCESS, INC.

Introductory Remarks

Veterans Due Process, recognized by the American Bar Association, the National Law Journal, Stars and Stripes, among others as the leading "independent" veter-

ans civil rights organization, is here today with the unpleasant responsibility of opposing Mr. Donald Ivers appointment to the Court of Veterans Appeals. We can't imagine a more unfortunate appointment. For veterans, it's as if, a thousand beacons of light had been short circuited on the day of his selection.

Accordingly, a Willie Sutton appointment to head the Savings and Loan's Resolution Trust Corporation, or Nero to head the fire department, could not have been viewed with more alarm than Mr. Ivers' appointment to the Court of Veterans Appeals.

Mr. Ivers' record as General Counsel clearly demonstrates that he cares little for due process or anything remotely resembling full, fair and compassionate hearings for veterans. Mr. Ivers often has testified before the Congress, and each time has either deliberately or ignorantly misrepresented important facts pursuant to the treatment of veterans' claims at the VA. In either event, he has no business being on the Court of Veterans Appeals.

For example: Senator Glenn took Ivers to task over his written testimony, re the SVAC hearing of April 28, 1988. Testimony which clearly evidences Mr. Ivers lack of concern for due process.

DUE PROCESS

"The General Counsel of the VA recently testified, for example, that judicial review will [require the VA to secure additional documentary evidence, time-consuming clinical examinations and field examinations, and in some cases, compel claimant's and other witnesses' attendance at hearings deemed necessary by the agency.] Mr. President, I find it hard to believe that forcing the VA to develop a full documentary record is somehow undesirabie.

"The VA (Ivers) also complains that judicial review would force adjudicators to write more detailed explanations of their decisions, that they would have to tell veterans exactly why decisions were made, that medical files would have to be more carefully screened, and that letters to veterans would have to be more clearly written. Again, it is difficult to understand how that would be bad. Shouldn't every veteran who is denied a benefit be told the specific reasons for that denial? Shouldn't all decisions be based upon a careful reading of the record? Indeed, shouldn't every decision be based on the best and most appropriate evidence?

"The Committee on Governmental Affairs uncovered some surprising facts about the way the current process works. The Committee was particularly concerned about testimony which indicates problems in the timely and accurate handling of claims within the Department of Veterans Benefits (DVB) which makes initial decisions and the Board of Veterans Appeals (BVA) which adjudicates final appeals."

UNIFORMITY OF DECISIONMAKING

Senator Glenn continues: "Mr. President, let me focus on one problem which was particularly troubling to the Committee:

"According to a 1984 internal study by the VA's office of program planning and evaluation, there appears to be a lack of consistency among regional offices in making rating decisions based on the exact same evidence. The study used a set of identical cases which were sent to 56 of the 58 regional offices for rating. All offices received the identical cases."

Needless to say the ratings were all over the lot in the three types of identical cases presented to 56 regional offices. In the first set of circumstances, the allowances ranged from 0 percent to 70 percent; in the second, allowances ranged from 0 percent to 30 percent; in the third, allowances ranged from 10 percent to 100 percent.

Any pretense of uniformity expressed by Mr. Ivers is belied by the VA's own study.

Note: No further study was made.

(A copy of Senator Glenn's complete statement to the Senate, may be seen in exhibit No. 1 as reprinted in the Stars and Stripes edition of November 14, 1988.) [1]

Mr Ivers testimony in both his Senate (4/28/88) and House appearances (9/8/88) included strong inferences that uniform handling of claims could only be accomplished by the VA and not the courts. When he testified before Congress, he knew that to be false, as evidenced by the following:

In response to Congressman Applegate's question before the 1985 HVAC Oversight Subcommittee hearings, Mr. Kenneth Eaton, BVA Chairman, replied:

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[1] Exhibit Nos. 1-14 are retained in the Committee files.

"Yes, indeed it is quite true there is what I might say is a significant variance between different sections of the board and how they see these cases. . . . There are a couple of sections, or Board members, I suppose, who are rather low in their allowances. But, you know you can't tell them what to do. . . ."

Congressman Applegate: "You can have equal cases, identical, where one will get more than the others . . ."

Mr Eaton: "I'm afraid so." (See exhibit No. 2, pages 3, 4, 5, 6.)

Later we learned that for the last quarter of fiscal year 1987, all 21 BVA sections allowances ranged between 7.9 percent and 18.6 percent; denials overall, ranged between 55.6 percent and 82 percent; and remands ranged between 6.9 percent to 31.6 percent. Obviously, these variances among the 21 BVA sections are significant and further contradict Mr. Ivers' statement re uniformity. (See exhibit No. 2, page 4.)

According to Mr. Eaton's testimony it is clear that he can't get uniform treatment of veterans claims in the same building, on the same floor or even in the same room—much less, the VA throughout the country. Accordingly, what does Mr. Ivers mean when he talks about uniformity?

The lack of uniformity re the treatment of veterans claims is further evidenced by Gail Gompf's (VA Director, Intergovernmental Affairs), famous blackmail letter (June 5, 1986) advising, among other things, that the NVSO's would be denied informal access to adjudicatory personnel, if a judicial review bill were passed.

From that letter alone Mr. Ivers had to know that self-represented veterans and pro bono attorneys lacked access to adjudicators and consequently were not treated uniformly or equally with NVSO represented veterans. If nothing else, that was a clear violation of the fifth amendment's equal protection clause requiring similarly circumstanced veterans to be treated alike. (See exhibit No. 3, page 7.)

Additionally, Mr. Ivers knew, from a VDP letter (12/1/87) sent directly to him, accompanied by documentation evidencing that Mississippi veterans were receiving twice as many claim allowances as the national averages; moreover, that each claim received by Mississippians averaged approximately 30 percent more than the national averages. (See exhibit No. 4, pages 8–15.)

As the General Counsel, he should have known that veterans of Puerto Rico, likewise discovered obtaining PTSD benefits, higher than the national averages, were immediately pounced upon, causing substantial numbers of them to have their benefits reduced or terminated and their claims transferred outside the Commonwealth.

What uniformity may be found in the treatment of Puerto Rican veterans and those of Mississippi escapes Veterans Due Process. More importantly, why has no investigation been performed of the benefits received by the veterans of Mississippi?

Also, Mr. Ivers must be aware of the BVA's special treatment personal signature list wherein veterans residing in States or districts represented by Congressmen and Senators placed on the personal signature list, are accorded preferential treatment. Are similarly situated veterans residing in States or congressional districts, other than those mentioned on the list, treated equally and uniformly with veterans whose representatives are on the list? (See exhibit No. 5, page 16.)

Further, in view of the fact that VA decisions are not codified, what basis does Mr. Ivers have for believing that veterans are being treated uniformly!!? And if he has none, why is he telling Congress that they are being treated equally. Moreover, why was the *Johnson* v. *Robison Court*, 415 U.S. 361 (1974), told that the VA had achieved uniformity while the courts could not?

Summary re liners and Uniform Treatment

There is no uniform treatment of veterans and once more Mr. Ivers knows it. Appropriately, one may ask, if he knows it, then why does he continually float the uniformity balloon all over Congress, when he knows it to be false? Is this the kind of man we want to judge veterans cases whose entitlements he has characterized as gratuities, citing *Lynch* v. *United States*, 292 U.S. 571 (1934).

As General Counsel, surely Mr. Ivers must know—that for all intents and purposes, that *Lynch* and the gratuity issue has been overruled by *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), which granted due process protection to welfare recipients. Further, *Goldberg* has been often cited by district court judges in veterans cases, when accepting jurisdiction, despite the judicial review preclusion clause contained in 38 U.S.C. 211(a).

If Mr. Ivers knows, than why does he call veterans compensation gratuities. Would compensation relating to the loss of an arm or a leg in combat strike this Senate as a gratuity? Similarly, would you consider workmen's compensation a gratuity, if you lost an arm or leg while working in a steel mill? In fact, in all of title

38, you will not find a single reference to gratuities—none at least, that Veterans Due Process could find.

Under the circumstances, what kind of a judge will Mr. Ivers make, if he believes that veterans receive gratuities. What chance are veterans going to have in his courtroom when he believes that veterans' compensation is nothing more than a gift. Veterans' chances are slim enough, as it is, without inviting Mr. Ivers to preside over a Court of Veterans Appeals, which from its inception, is basically unfair to veterans.

Technical and Complex Medical Decisions

Mr Ivers has testified before the Congress that only the VA can make the technical and complex medical decisions involved in veterans cases and that the courts would be at a serious disadvantage when endeavoring to do so.

Yet we learn that many signatories to BVA decisions have not even read the case and under the unpublished practice of "courtesy signatures" merely sign off, as an accommodation, which is thereupon reciprocated in order to meet the mandatory requirements of 40–80 decisions per week. "Courtesy signatures" include both legal and medical members of the Board. (See exhibit No. 6, pages 17, 18—which is a continuation of the Richard O'Dell, VVA testimony begun at exhibit No. 2, pages 2–6.)

Further we learn that at some regional offices, medical opinions are allowed to accumulate and thereupon are decided two or three times weekly on basis of one medical decision per minute. (See exhibit No. 7, page 21, Deep Throat letter No. 1.)

Note: While this "Deep Throat" letter to Gordon Erspamer of NARS fame is unsigned, the same letter writer's information was instrumental in causing the VA to pay a $120,000 fine for destroying documents requested under court order. Further, the district court judge was so leery of VA compliance with subsequent court orders, that a special master was appointed to insure compliance therewith.

Also, we learn that specialists opinions in favor of veterans are routinely trashed by intimidated VA doctors, that BVA adjudicators are not independent and are forced to accede to the BVA Chairman's demands. (See exhibit No. 8, pages 22, 23 probably the most comprehensive and enlightening of all of the exhibits, in explaining the VA's hidden agenda.)

Moreover, we learn that independent medical expert opinions were not allowed because the VA and the Office of Management and Budget's belief that veterans would win 33 percent or 77 percent more often, depending upon which set of numbers are used. Obviously we can't have veterans winning too often because it would break the VA's "plague infested" budget. (See exhibit No. 9, page 24, originates from SVAC Hearing Report 97–466, May 11, June 8, 1982.)

Under the circumstances, where is the technical competence of which Mr. Ivers and the VA boast? We can find no competence exhibited in simple cases, much less complicated ones. All Veterans Due Process can find is a budgetary "not fact driven" system of injustice.

Obviously, if they were doing their homework—Mr. Ivers and the Congress would know all about this. Of we can't be too sure about the Congress since most members view assignment to the Senate and House Veterans' Committee as a thankless task and consequently pay little attention to their responsibilities to veterans.

If this were not so, than how can anyone account for the fawning treatment accorded VA bureaucrats when testifying before the Congress? Why aren't these bureaucrats subjected to searching, piercing, and penetrating questions devised to elicit the truth in order to expose the lies routinely told the courts, the House, Senate and the press. What is the Congress afraid of, and why won't they free veterans from the tyranny of VA abuse? (See exhibit No. 10, page 25.)

Vetgate, a scandal without parallel in the annals of American history has a cast of millions, a budget in billions and a barn door wide open; and because of its constitutional implications will be the largest and most devastating scandal in our history.

Veterans Due Process arrives at this inescapable conclusion, because it involves the rape and murder of the Constitution. And because, it affects the lives of 27 million veterans and 53 million of their dependents who have been covertly deprived of their first and fifth amendment rights.

Also, because it was done to America's defenders, whose only crime was to be injured defending the Constitution. How many American youngsters are going to enlist when their parents learn the "awful truth," as they soon shall.

Attorneys

Mr Ivers says that if veterans are permitted to hire attorneys that it will turn the VA's nonadversarial system into a bureaucrats nightmare and work against the interests of veterans.

Mr Ivers doesn't want veterans to have attorneys, although the VA has approximately 700 of them, all of whom, are perceived by veterans to be working overtime in denying veterans' claims. He can't allow attorneys to routinely practice before the VA, because ultimately, they will discover the numerous due process violations perpetrated daily against helpless and unsuspecting veterans.

And when the lawyers complaints go unheeded, as they surely will, it will become incumbent upon the legal profession to lobby their local bar associations, go State and national—causing the bureaucrats' welfare and convenience scheme, to come crashing down in a torrent of public censure.

If the Senate recalls, it was the legal profession, which brought down the wrath of the courts upon the Social Security Administration, culminating in the unanimous Supreme Court decision in *Bowen* v. *The City of New York*, 476 U.S. 467 (1986), striking down the SSA's unpublished, sub rosa, clandestine, policies, practices and procedures which were surreptitiously robbing Social Security claimants of their just entitlements. Wait until the Supreme Court learns that those same SSA policies originated with the VA.

That's what Ivers fears, but he won't tell the Congress—so long as the Congress fails to subject him to intense questioning. From VDP's vantage point, there is very little prospect of that, since over 50 years have elapsed, during which time the Congress has blindly accepted the most blatant VA lies, virtually without a murmur of protest.

Court Overcrowding

Court overcrowding doesn't concern Mr. Ivers, he just doesn't want the Court meddling in the VA's business. Can you blame him, with all of the skeletons in the VA's closet? Consider the consequences, if there was judicial oversight over the VA's "plague infested" system of injustice. Just imagine the repercussions, when all of the VA's clandestine "unpublished" sub rosa, policies, practices and procedures incorporating a budgetary driven quota system are exposed in open court. Frankly, Mr. Ivers and the VA can't face the music or permit veterans to litigate the merits of their claims in open court.

If Mr. Ivers or the VA were genuinely worried about court overcrowding, then why are hundreds of thousands of veterans hauled into court pursuant to alleged VA overpayments—but then, aren't permitted to plead a defense or to return the favor. The fact is, the courts are overcrowded only when veterans wish to enter, not when the VA wishes to enter. When will the Congress ask Mr. Ivers to explain his court overcrowding rationale, if he has one? What kind of a law permits one party to sue, but denies reciprocity to the other party?

Denial of Hearings

There is substantial evidence that veterans are being denied hearings at crucial and sensitive stages of the adjudication process at VARO level. Moreover, BVA's Chairman, Mr. Eaton has testified that he is unable to provide traveling board panel hearings to all of the veterans who might wish to have them in their own home locales. Unfortunately, most veterans were never told of this option and simply dropped their claims, unable to afford the expense of a trip to Washington, DC.

The few traveling board hearings available were divided up among the various NVSO's, without the knowledge of their clients, who never knew that the NVSO's had authority to pick and chose which cases merited traveling board panel review. That is tragically similar to the holocaust death camp selection process; the victims, didn't know either.

To VDP's knowledge, Mr. Ivers never did anything about the willful denial of hearings or about Mr. T.A. Verrill, the VARO San Francisco adjudication officer who was rewarded for his creativity in denying veterans hearings. (See exhibits Nos. 11 and 12, pages 26–31; also, exhibit No. 7, page 20.)

28 Unfair VA Practices

Please see exhibit No. 13, pages 32–35.

JUDICIAL TEMPERAMENT

What kind of judicial temperament does Mr. Ivers display when he refuses to sit next to veterans highly critical of the VA during the SVAC hearing of 4/28/88. What kind of an impression does that convey? After all, those veterans have as much right to express their views, as does Mr. Ivers. (See exhibit No. 14, page 36.)

More importantly, if Mr. Ivers is appointed, many plaintiffs appearing before him will likewise be highly critical of the VA. What does that portend, in Ivers' court? Does that mean that such plaintiffs will be drummed out of court? What does his lack of judicial temperament presage for the future?

Mr. Ivers appointment would convey the wrong message to veterans, and anyone else interested in due process, fair and impartial hearings. As the VA's chief apologist, Ivers doesn't belong on the Court for the foregoing reasons, and accordingly, his nomination should be overwhelmingly defeated.

Washington, D.C. 20525

Office of the Director

April 9, 1981

The Honorable Alan Cranston
Committee on Foreign Relations
United States Senate
Washington, D. C. 20510

Dear Senator Cranston:

On Friday, April 3, 1981, I was informed that you had sent a letter to Mr. Fred Fielding, Counsel to the President, in which you asked us to expand our responses to the questions submitted by the Chairman of the Committee to include whether "Under the present Peace Corps policy and practice regarding persons with intelligence backgrounds and taking into account Mr. Pauken's previous military experience and association he would be eligible to hold a position on the Peace Corps staff or to serve as a Peace Corps volunteer." My response to this question has been delayed because I wished to see a copy of the letter itself.

As I am sure you are well aware, the application of the Peace Corps intelligence policy to those wishing to serve either as volunteers or as Peace Corps staff members is much stricter than those wishing to serve in certain staff positions in the ACTION Agency. The primary reason for this dichotomy is the heightened concern for the safety and security of the volunteers and staff overseas, especially in countries where even the suspicion-albeit totally unfounded--of participation in intelligence activities could seriously jeopardize not only the lives of these persons but also the credibility and vitality of our programs.

Our concern in this area has increased in recent years as terrorist and guerrilla organizations have looked upon hostage-taking as a standard operating procedure to effect short-term domestic and international political gains. The possibility and the fear that our volunteers or staff could be used as pawns in such a situation is not speculative. In recent times two of our volunteers have been held hostage: one for three years and another for ten days. Consequently, since most of our volunteers operate outside of capital cities oftentimes at great distances in rural villages, the Peace Corps has strictly applied the intelligence policy and has, if at all, erred on the side of extreme caution.

For these reasons I respectfully question the relevancy of the following discussion of the application of the intelligence policy to volunteers and staff of the Peace Corps to an individual who has not applied to serve in either category.

As a preface to the discussion which follows, I wish to point out that I am relying solely on the transcript of the hearing on Mr. Pauken's nomination to be Director of the ACTION Agency, which the Committee held on Wednesday, March 25, 1981, for the factual predicate for my opinion. I assume that the information contained in that transcript is not only accurate, but also complete. I have not had access to any other documents, such as Mr. Pauken's military record (Tr. 48). I assume information in that record neither contradicts nor qualifies the information contained in the transcript.

The hearing transcript provides the following information regarding Mr. Pauken's military service:

1. Upon enlisting in the Army, he requested an assignment to international affairs and was assigned to Special Intelligence (Tr. 54-56);

2. From June 1967 to December 1968, he received intelligence and language training (Tr. 9, 41);

3. His first assignment in Vietnam was a Province Intelligence Officer in the Delta (Tr. 9, 41). He described his primary duties as "nothing other than low-level order of battle collection of information (Tr. 42), and he was primarily involved "with analyzing a particular religious sect that is in the Delta known as Hoa Hao, which is an off-shoot of the Buddhist sect." (Tr. 43-50).

4. An efficiency evaluation report covering the period of November 1, 1968 to May 31, 1969 described his principal duties as "team chief in a unilateral clandestine intelligence collection operation" (Tr. 49).

5. An efficiency evaluation report covering the period of June 1, 1969 to August 22, 1969 described his principal duties as "team chief of an intelligence collection team engaged in covert intelligence operations, directly responsible for developing and directing team operations in direct support of the counter-insurgency effort in the Four Cord (?) (sic) tactical zone in the Republic of Vietnam" (Tr. 49).

6. In conjunction with the report mentioned in No. 5 above, Mr. Pauken commented "simultaneously I continued to develop the covert intelligence programs of the team I headed" (Tr. 50).

7. His work did not include the knowing interrogation of North Vietnamese, Viet Cong soldiers or civilians (Tr. 43-44).

8. He carried out these activities in the Delta at times in civilian clothes and at other times in uniform. He did not, however, have any type of cover (Tr. 45).

9. He later served as a Senior Analyst for the Office of Strategic Research and Analysis in Saigon. In this capacity he "prepared a number of studies on everything from communist revolutionary strategy towards South Vietnam and did a major study on Truong Chinh, who was a leading North Vietnamese revolutionary theorist" (Tr. 45-46). He also conducted "studies on the relationship between the North Vietnamese and the Viet Cong" (Tr. 46).

10. He testified that, to his knowledge, he did not communicate with intelligence personnel from any other intelligence agency, including the CIA (Tr. 47).

11. The citation accompanying the Joint Service Commendation Medal that he was awarded stated that his "analyses provided the Commander, United States Military Assistance Command, Vietnam, of the United States Embassy and other agencies throughout the intelligence community with intelligence information of great value in the counter-insurgency effort in Vietnam" (Tr. 51). Mr. Pauken testified, however, that he was unaware that the reports were passed on to other agencies. (Tr. 44, 46, 51-52).

12. An efficiency report covering the period of August 23, 1969 to December 27, 1969, indicates he "contributed to the success of several joint classified projects undertaken with other intelligence agencies in the Saigon area" (Tr.53).

13. On December 29, 1969, he received special orders assigning him to a reserve unit; on January 4, 1970, he was separated from active duty; on March 10, 1972, he signed an election to be transferred to the USAR Control Group Standby upon expiration of the Ready Reserve obligation; and on February 14, 1973, he received a notice of discharge from Standby Service effective February 28, 1973. (Tr. 57, 59; <u>see also</u> Tr. 47-48).

During this period of time, Department of Army records show Mr. Pauken's military intelligence MOS was continued as a military intelligence officer (Tr. 57).

14. Regarding the nature of this inactive reserve status, Mr. Pauken has testified that after his discharge he in fact had no connection or involvement with the military or intelligence (Tr. 9, 32-33, 58, 60-61). At the Committee's hearing on his nomination, he testified:

> " . . . I never went to a meeting, never talked with anyone from the military, never had any connection with military intelligence after the day I discharged or got out in Oakland." (Tr. 58).

Eligibility for Service as a Peace Corps Volunteer:

The intelligence policy as it applies to volunteers is codified in Peace Corps Manual Section 201. II.B., which was most recently revised in May 1973. Manual Section 201. II.B. states that to be eligible for Peace Corps service, an applicant must:

5. Have no connection with the Central Intelligence Agency;

   a. Any person who has ever had a Central Intelligence Agency connection is automatically disqualified from Peace Corps service.

   b. Any person with other intelligence training or who has done intelligence work within the past ten years is also disqualified from Peace Corps service. A person who was involved in intelligence activity (other than CIA) more than 10 years ago will be referred to General Counsel which will determine if the nature of that activity was sufficient to warrant disqualification.

   c. Any question as to whether an activity constituted an intelligence activity under these guidelines will be referred to General Counsel.

In determining whether the nature of intelligence activity was sufficient to warrant disqualification under the provisions of Manual Section 201.II.B.5.b., the Office of General Counsel uses the following criteria to determine whether the 10-year bar should be extended in a particular case:

1. Was the applicant's involvement sufficiently extensive to create the impression of career service which may not have been terminated?

2. Was the applicant's previous position in the intelligence field a prominent one (i.e., would he or she be likely to be known as an intelligence official)?

3. Did the applicant serve overseas while in the intelligence field?

4. What was the nature of the individual's involvement (e.g., was the person involved in covert action, which would probably be a permanent bar)?

The first issue to be resolved is whether Mr. Pauken falls within the 10-year bar by virtue of the fact that he was on inactive reserve status as a military intelligence officer until 1973. As I indicated in my letter to the Chairman dated April 3, 1981, this Office has never specifically ruled on the issue of whether inactive reserve status should be included for purposes of the 10-year rule. Manual Section 201.II.B.5.b. requires that the individual not have been involved in intelligence training or in intelligence work for 10 years prior to his acceptance to the Peace Corps. Mr. Pauken's uncontradicted statement (see No. 14 above) clearly indicates that he was involved in no military intelligence training or activities during the period of time which would have fallen within the 10-year provision. The circumstances surrounding his inactive reserve status also clearly indicate that this status was an administrative classification evidencing a continuing legal obligation without any actual involvement with the military. Consequently, he would not be barred automatically by the 10-year rule.

The second and more important question was whether his activities as a military intelligence officer in Vietnam were sufficient to warrant disqualification as a Peace Corps volunteer, despite the fact that it occurred more than ten years ago. Regarding the first criterion, it is my opinion that Mr. Pauken's military service was not sufficiently extensive to create the impression of career service. Although he technically served for a period of six years, two of those years were in training in the States prior to going to Vietnam and only approximately eleven months were served as an intelligence officer. Although he was on inactive reserve status as a military intelligence officer, once he was discharged in Oakland, he had no further connection with the military or with any intelligence agency. In fact, it is clear from his biographical data that Mr. Pauken once again became a private citizen and engaged in activities totally unrelated to the military of to the intelligence fields.

With respect to the second criterion, it is my opinion that Mr. Pauken--even absent the intense publicity which has surrounded his nomination--would likely be known as an intelligence official. As a Province Intelligence Officer and as a Senior Analyst with the Strategic Research Analysis, it is not only likely but certain that he was known to the North Vietnamese intelligence and counter-intelligence divisions and that this information could have been routinely passed on at least to Soviet intelligence if not also to other sympathetic hostile intelligence services. For this reason, not only is there a strong possibility that the credibility of the Peace Corps program in the country to which he might be assigned would be jeopardized, but also, and more importantly, his own safety as a volunteer could be threatened--especially in those countries undergoing a degree of political instability-- should he be accepted as a volunteer.

Regarding the third criterion, he did serve overseas, albeit in a military capacity, and in a country where the U.S. military forces were engaged. His presence overseas and his contact with host country nationals in his capacity as an intelligence officer increases the likelihood of his notoriety.

With respect to the fourth criterion, the exact nature of Mr. Pauken's intelligence activity in Vietnam is unclear at best. Mr. Pauken's testimony regarding his primary responsibilities are contradicted by the evaluation reports which indicate that he was involved in and responsible for clandestine and covert operations. Without attempting to reconcile the apparent contradictions, even the remote possibility that such information would surface could be devastating to virtually any Peace Corps program. Consequently, in my opinion, he should be disqualified from serving as a volunteer under this criterion as well.

Conclusions drawn from the application of these criteria must of necessity rest to a certain degree on speculation. It is very possible that no one would remember or learn that he was a military intelligence officer or that, at least according to Department of Army records, he was involved in clandestine and covert intelligence operations. However, the genuine risk to the safety of Mr. Pauken as a volunteer, to other volunteers, and to the viability of Peace Corps country programs far outweighs the equally speculative gain of accepting him for volunteer service.

Eligibility for a Position on the Peace Corps Staff:

The intelligence policy as it applies to Peace Corps staff positions is codified in Manual Section 643, para. 4 which states in part:

b. Any person who has ever had any Central Intelligence Agency (CIA) employment shall be barred from considerations for positions in Peace Corps operations overseas and in ACTION's Office of International Operations (now Peace Corps/Washington).

c. Any person whose application reveals intelligence activity (other than CIA) within the past 10 years shall be barred from consideration for positions in Peace Corps operations overseas and in ACTION's Office of International Operations (now Peace Corps/Washington).

You will note that, unlike the regulations applicable to volunteer service, Manual Section 643 appears to make employee applicants automatically eligible for Peace Corps staff positions upon the expiration of 10 years following their last intelligence involvement. However, as a matter of practice, the Peace Corps looks behind the 10-year bar if an applicant's intelligence background was particularly extensive or involved covert activities. Because the same concerns regarding the health and safety of volunteers and Peace Corps programs apply equally to a staff position, there is no logical reason to differentiate between volunteers and staff. While this is currently the policy and practice of the Office of General Counsel and has been since I became the General Counsel, in candor I must admit that, in the three years prior to my accepting this appointment, the application of this policy and practice has been inconsistent.

In my opinion, for the reasons set forth above where I discuss the application of the various criteria used to determine the eligibility of applicants for Peace Corps volunteer service, Mr. Pauken would be barred from serving in a position as a Peace Corps staff member in any overseas position, in any Peace Corps/Washington policy position, in any country desk officer position, and in any position which would likely require him to travel overseas as part of his official responsibilities.

He would be clearly barred from any overseas position since any allegation arising from the fact that he had been a high level intelligence officer in Vietnam and allegedly conducted clandestine covert operations in that country would be the death knell to any Peace Corps program in which he served and would jeopardize the safety of volunteers in that country. Similarly, were he to serve in a policymaking position, a country desk position, or a position requiring overseas travel, such allegations could have the same impact on the Peace Corps' credibility and integrity. I would again point out that this analysis rest on a highly speculative set of probabilities, but the grave risks

to the individuals who serve in the Peace Corps and to the Peace Corps itself warrant a high degree of caution in the application of this policy.

I have attempted to apply the policy without reference to the publicity which has surrounded Mr. Pauken's nomination. However, because of the extensive publicity which his nomination has received, the perception of Mr. Pauken's intelligence involvement has taken on a substance of its own. Thus, unfair as it might appear, we would be forced to take this publicity into account were Mr. Pauken to apply for a position with the Peace Corps in the near future.

Sincerely,

Robert M. McNamara, Jr.
General Counsel

cc: The Honorable Charles H. Percy
Chairman

June 1, 1990

The Honorable
Alan Cranston
Chairman, Veterans' Affairs Committee
United States Senate
414 SROB
Washington, D.C. 20510

Dear Mr. Chairman:

I write to you in support of the naming of Jonathan R. Steinberg to a Judgeship on the Veterans Appeals Court.

The reasons why I feel compelled to write on his behalf are because of the many outstanding attributes I know he would bring to this important position. Our veterans deserve our finest and they would get that with Mr. Steinberg. As Director of the Peace Corps for eight years, I worked on many issues of concern over the proper support of our thousands of Volunteers and Staff. Mr. Steinberg was unfailingly supportive, interested, dedicated completely to their welfare and the goals of the Peace Corps. He indicated, even while he worked for them, of his great interest and concern for our nation's Veterans -- those who had served to keep the peace deserved their nation's gratitude and support. No one would be more dedicated or harder working with a wealth of background to show a nation's gratitude and support!

Sincerely,

Loret Miller Ruppe

Loret Miller Ruppe
American Ambassador

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